Exhibit #35

United States Environmental Protection Agency | Office of Water 4503 F Washington DC 20460 | EPA 841-B-99-004 October 1999

EPA

Protocol for Developing Sediment TMDLs

First Edition

Objective: To develop a sediment TMDL, it is important to have a basic understanding of sediment processes in a watershed and how excessive or insufficient sediment can affect water quality and designated uses of water. This section provides background information on sediment impacts on designated uses, sediment sources and transport, and potential control strategies. Naiman and Bilby (1998) and Waters (1995) offer general information discussing sediment water quality. Unlike many chemical pollutants, sediment is a vital natural component of waterbodies and the uses they support. However, sediments can impair designated uses in many ways, including those discussed here. Excessive sediments deposited on stream and lake bottoms can choke spawning gravels (reducing survival and growth rates), impair fish food sources, fill in rearing pools (reducing cover from prey and thermal refugia), and reduce habitat complexity in stream channels. Excessive suspended sediments can make it more difficult for fish to find prey and at high levels can cause direct physical harm, such as clogged gills. In some waters, hydrologic modifications (e.g., dams) can cause sediment deficits that result in stream channel scour and destruction of habitat structure. For more information, see Waters (1995).

Sediments can cause taste and odor problems, block water supply intakes, foul treatment systems, and fill reservoirs. Although most treatment systems can remove most turbidity, very high sediment levelssometimes require that water supply intakes be shut down until turbidity clears or system maintenance (e.g.,backflushing) is performed.

High levels of sediment can impair swimming andboating by altering channel form, creating hazards due to reductions in water clarity, and adversely affecting aesthetics. Aquatic habitat impairment by sediments can also interfere with fishing. Sediment is created by the weathering of host rock and delivered to stream channels through various erosional processes, including sheetwash, gully and rill erosion, wind, landslides, dry ravel, and human excavation. In addition, sediments are often produced as a result of stream channel and bank erosion and channel disturbance. Movement of eroded sediments downslope from their points of origin into stream channels and through stream systems is influenced by multiple interacting factors. Eroded sediments are often trapped on hillslopes and stored in and alongside stream channels. Sediment analyses conducted for TMDLs often account for the influence of these sediment storage and transport mechanisms on the magnitude, timing, and location of sediment-related impairment of designated uses. For more information on sediment sources and transport processes, see Reid and Dunne (1996). In some settings, land management changes cause changes in runoff even if they do not result in increased upslope erosion. Where this occurs, channel erosion or sediment deposition may increase.

It might be appropriate to develop sediment TMDLs to address this type of situation. Because erosion is a natural process and some sedimentation is needed to maintain healthy stream systems, it is often necessary to evaluate the degree to which sediment discharge in a particular watershed exceeds natural rates or patterns. This analysis can be complicated because sedimentation processes in many systems are highly variable from year to year. This type of analysis is particularly important in settings that are vulnerable to high natural sediment production rates and are particularly sensitive to land disturbance (e.g., the Pacific Northwest and many areas of the desert Southwest). Erosion rates under natural and disturbed conditions can be compared through several approaches, including comparative analysis with reference streams and literature values for similar settings.

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HOVNANIAN ENTERPRISES, INC.

As a company devoted to building excellence, Hovnanian Enterprises, Inc. is heir to a history of solid success, financial strength and an authentic commitment to customer satisfaction.

BUILDING FINE HOMES FOR TODAY'S FAMILIES

The K. Hovnanian® family of homebuilders has been building superior quality homes and communities since 1959 and is ranked among the top ten homebuilders in the nation. Persistent attention to quality construction and customer satisfaction has created a solid reputation for integrity, dependability, and leadership - values that were important when the company started and that still hold true today.

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WHEREWE BUILD HOMES

Looking for a home? We are currently building homes across the United States.

OUR HOMEBUYERS SPEAK VOLUMES

Happy Homeowner sings Builder's praises

One homeowner summed up his experience with K. Hovnanian® Homes™ in a single word: "Wow! I would welcome the opportunity to do business with your company again." Kenneth U, who purchased a K. Hovnanian Home in New Jersey sent a letter to Ara Hovnanian to tell him how great the entire process was thanks to everyone he worked with at K. Hovnanian Homes. Learn more

INVESTOR RELATIONS

Corporate Overview

Founded in 1959, Hovnanian Enterprises, Inc. designs, constructs and markets a variety of for-sale housing in more than 275 residential communities in 15 states. Hovnanian ranks among the largest homebuilding companies in the U.S., with total revenues of $3.2 billion on 11,531 home deliveries in fiscal 2003.
Learn more

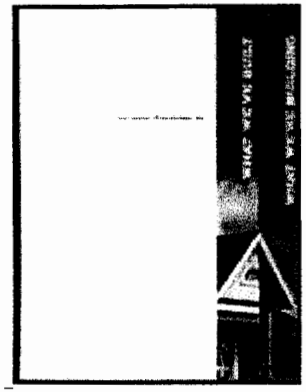
K. HOVNANIAN'S FAMILY *of* BUILDERS

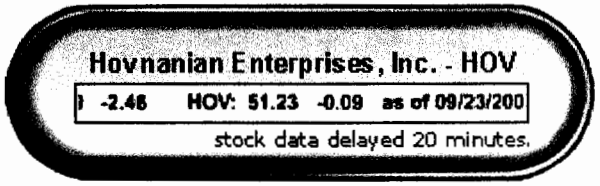
Our Family of Builders

The K. Hovnanian® family of homebuilders has been designing and building quality homes and communities since 1959. Backed by the strength and support of a solid national company, our homebuilders are able to retain their proficiency and distinctiveness in numerous markets throughout the U.S.
Learn more

Build: 093 - KHOVWEB01
Page Address

2004 Annual Report





Replay
Hovnanian Enterprises, Inc. at Banc of America Securities 35th Annual Investment Conference

September 20, 2005, 4:30 PM PT

Founded in 1959, Hovnanian Enterprises, Inc. designs, constructs and markets a variety of for-sale housing in more than 300 residential communities in 17 states. Hovnanian ranks among the largest homebuilding companies in the U.S., with total revenues of $4.2 billion on 14,586 home deliveries in fiscal 2004.

Hovnanian has produced significant shareholder value over the past five years. Earnings per share in fiscal 2004 of $5.35 represented a 36% increase over fiscal 2003's record performance, and return on beginning equity of 43%. The Company has achieved a compounded rate of growth in earnings of 76% over the past three years and 63% over the past five years. This rate of growth contributed to Hovnanian being selected to FORTUNE magazine's 2004 list of the "100 Fastest Growing Companies" in the U.S. for the third consecutive year. Management expects earnings per share to increase by 31% in fiscal 2005, to over $7.00 per share, on more than 16,400 home deliveries.

Hovnanian has successfully expanded operations both internally and through acquisitions. Over the past several years, the Company has diversified its geographic footprint across the nation. Hovnanian is the largest builder in New Jersey, and is the second-largest builder in Metro-Washington, D.C. and in North Carolina. The Company is also one of the largest builders in both the Inland Empire region of Southern California and the greater Sacramento and Central Valley markets in Northern California. In Texas, Hovnanian has a significant market presence in the Dallas/Fort Worth and Houston markets. In the later half of 2003, the Company further expanded its homebuilding operations into the Ohio, Phoenix and Tampa markets through the acquisitions of Summit Homes, Great Western Homes and Windward Homes, respectively. In 2005, Hovnanian announced the purchase of Cambridge Homes and the acquisition of the operations of Town & Country Homes, which occurred concurrently with entering into a joint venture to own and develop Town & Country's existing communities. These most recent acquisitions further enhance the Company's geographic diversification, in Chicago, Florida and Minneapolis.

Hovnanian's strategy is to achieve powers of scale and market concentration by establishing a large presence in each of its markets. This strategy leads to higher margins, stable performance and a premier land position in each of its markets. Hovnanian leverages its market position and expands

profit sources by providing mortgage and title services to homebuyers. Hovnanian has also been a leader in implementing streamlined processes and technology solutions for home sales and construction, leading to improved operational efficiencies.

Hovnanian is highly diversified by product type, selling a wide array of attached and detached home styles to buyers ranging from first-time purchasers to luxury buyers. The Company is also a significant developer of active adult communities, and has developed a specialization in urban infill locations.

Shareholder Information

Exchange

New York Stock Exchange (.N)

Stock Quote (HOV)

51.23
As of 9/23/2005 4:01 PM
Minimum 20 minutes delayed

Listed Security

HOV Class A Common Stock

Transfer Agent

National City Bank
Corporate Trust Operations
Locator 5352
P.O. Box 92301
Cleveland, OH 44193-0900
Phone 800-622-6757
Fax 216-257-8508
E-mail shareholder.inquiries@nationalcity.com

Corporate Counsel

Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3909

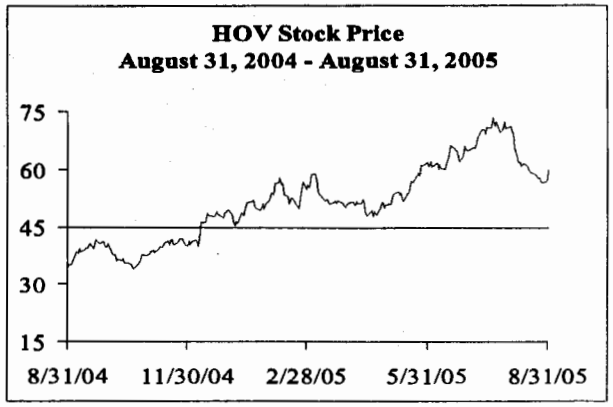
Independent Accountants

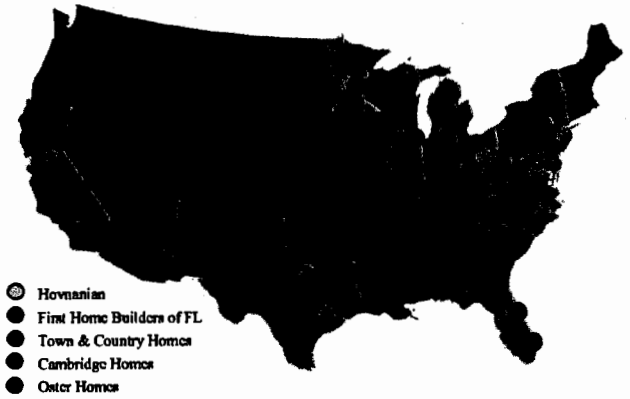
Ernst & Young LLP
787 Seventh Avenue
New York, NY 10019

Note: All statements in this web site that are not historical facts should be considered as "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Such risks, uncertainties and other factors include, but are not limited to, (1) changes in general and local economic and business conditions, (2) weather conditions, (3) changes in market conditions, (4) changes in home prices and sales activity in the markets where the Company builds homes, (5) government regulation, including regulations concerning development of land, the homebuilding process and the environment, (6) fluctuations in interest rates and the availability of mortgage financing, (7) shortages in and price fluctuations of raw materials and labor, (8) the availability and cost of suitable land and improved lots, (9) levels of competition, (10) availability of financing to the Company, (11) utility shortages and outages or rate fluctuations, (12) geopolitical risks, terrorist acts and other acts of war and (13) other factors described in detail in the Company's Form 10-K for the year ended October 31, 2004.

Hov

Share Price (09/12/05)	**$57.87**
# Common Shares (mm)	**61.7M**
Market Cap	**$3.6B**
EPS (FY 2004)	**$5.35**
P/E (trailing)	**10.8x**
EPS (FY 2005P)	**> $7.00**
Forward P/E (FY 2005)	**8.3x**
EBIT (FY 2004)	**$625M**
EBIT Margin (FY 2004)	**15%**
Revenues (FY 2005P)	**>$5.5B**





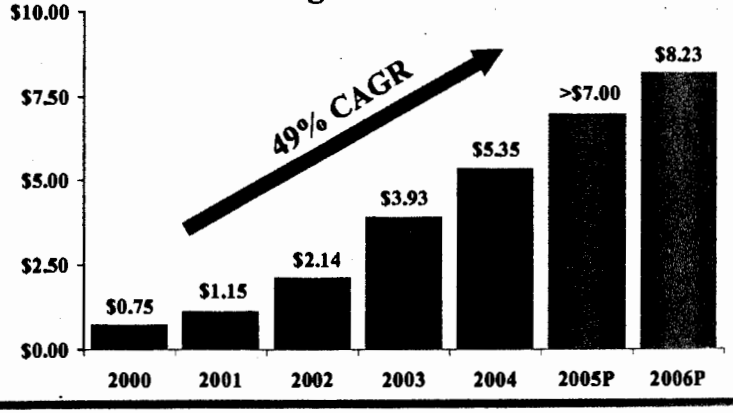
Overview:

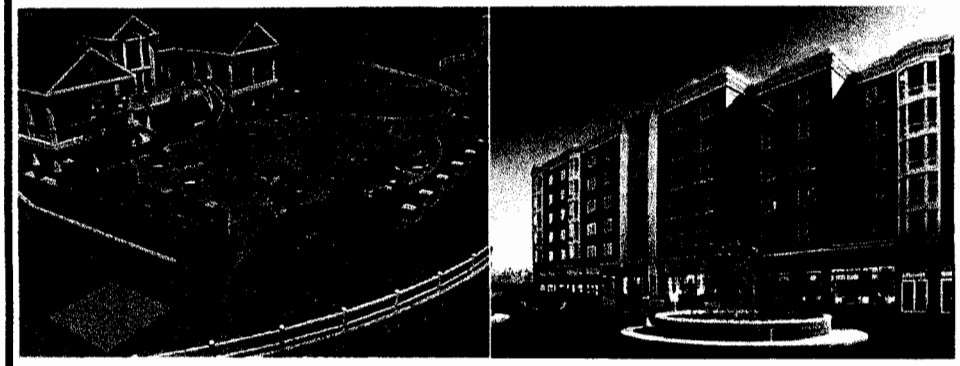
- 7th largest homebuilder in U.S.
- Founded by Kevork Hovnanian in 1959
- Delivered more than 185,000 homes since inception
- 323 active selling communities in 17 states
- Diversified mix of housing products including entry-level, move-up and luxury homes, as well as attached townhomes, mid-rise condos in urban locations, and active-adult communities.

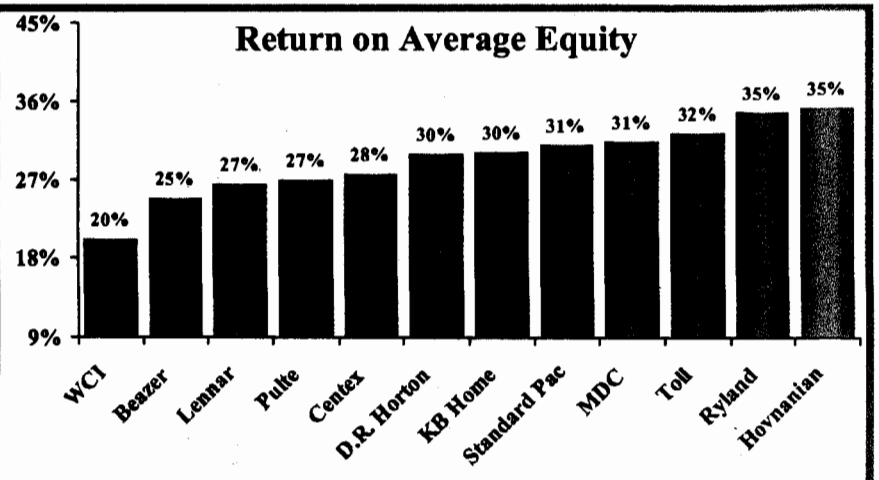
Investment Highlights:

- 76% CAGR in net income over the past three years
- TTM after-tax return on beginning common equity of 41.5%
- TTM after-tax return on capital of 22.5%.
- 2nd highest 5 year total return of FORTUNE 500 companies
- FORBES Platinum 400 Company, fourth consecutive year
- FORTUNE's list of "100 Fastest Growing Companies"

Earnings Per Share





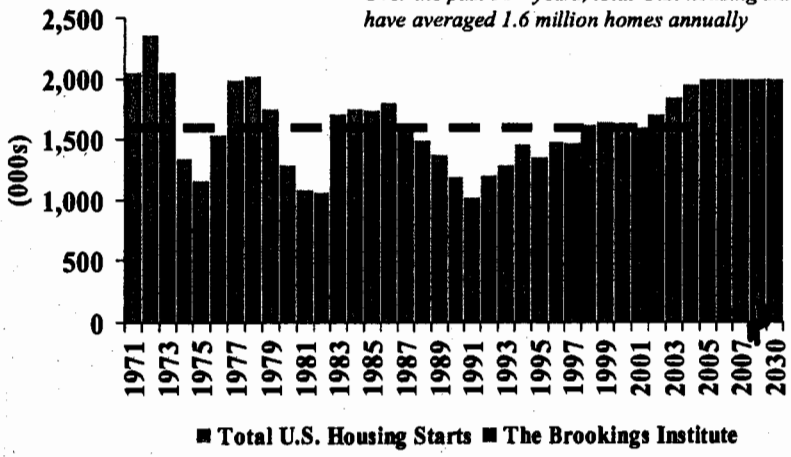


"We estimate there will be about 154.8 million residential units in 2030 to accommodate new population. So, this nation will need to build about 58.9 million new units between 2000 and 2030." - ***Brookings Institution – December 2004***

Source: Based on CSFB report as of August 30, 2005

Total U.S. Housing Starts

Over the past 30+ years, total U.S. housing starts have averaged 1.6 million homes annually



Source: U.S. Census Bureau; National Association of Homebuilders and The Brookings Institution.

Summary Financial Projection

	Fiscal Year ending October 31,		
($ million except per share data or where noted)	2004	2005 Projection	2005 Change
Consolidated Home Deliveries[1]	14,586	> 16,200	> 11%
Average Sales Price ($000)	$280	$320 – $325	
Net Income	$349	> $459	> 32%
EBITDA[6]	$678	> $915	> 35%
Debt/EBITDA[7]	1.5x	< 1.8x	

(1) Excluding deliveries from unconsolidated joint ventures.
(2) Homebuilding Gross Margin as % of Homebuilding revenues; Interest in Cost of Sales not included in Homebuildin
(5) Fiscal 2005 projection includes (i) estimated land sale revenues and pre-tax profits, and (ii) estimated net income
(6) EBITDA is a non-GAAP financial measure. The most directly comparable GAAP financial measure is net income. EBITDA represents earnings before interest expense, income taxes, depreciation, amortization and other non-recurring write-offs.
(7) Based on recourse debt at year end; year end 2005 ratio includes all debt resulting from recent acquisitions but does not include LTM EBITDA from those acquisitions.

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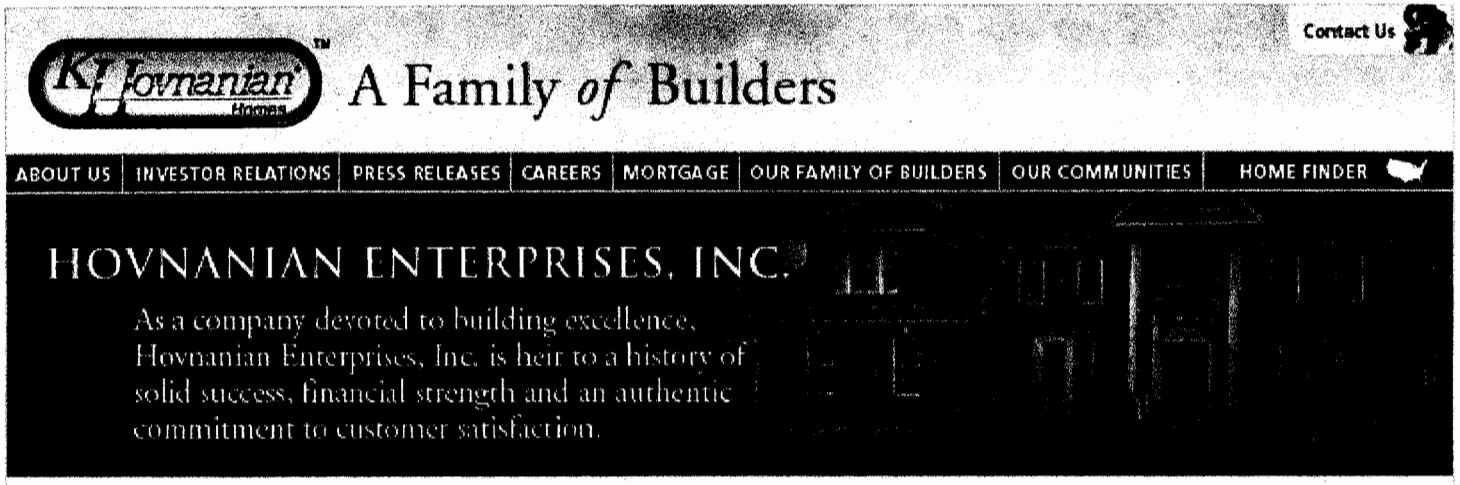

Financial Information

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Corporate Summary

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- SEC Filings
- Earnings Estimates
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First Call Earnings Estimates Summary
Hovnanian Enterprises, Inc. (ticker symbol: HOV)

Fiscal Year Ending Oct **Last Changed: 9/23/2005**

Year Ending	Q1 Jan	Q2 Apr	Q3 Jul	Q4 Oct	Fisc Yr Annual	Num Brok	Cal Yr Annual	Num Brok
2007					9.63	2		0
2006	1.57	1.89	2.19	2.78	8.41	8	9.06	2
2005	1.25A	1.62A	1.76A	2.42	7.05	8	7.37	7
2004	0.87A	1.06A	1.33A	2.06A	5.32	3	5.70	8
2003	0.68A	0.80A	1.06A	1.40A	3.93	4	4.13	3
2002	0.30A	0.41A	0.72A	0.83A	2.15	3	2.64	3
2001	0.19A	0.24A	0.36A	0.37A	1.15	4	1.27	4
2000	0.08A	0.08A	0.19A	0.42A	0.76	1	0.88	1
1999	0.15A	0.18A	0.20A	0.21A	0.73	3	0.67	1
1992	0.07A	-0.04A	0.03A	0.05A	0.11	0		0
1991	0.02A	0.01A	-0.42A	0.03A	-0.37	0		0
1990	0.00	0.00	0.00	0.00	0.00	0		0

Mean Recommendation: 2.1 **Mean 5-yr Growth Rate: 17.5%**

Disclaimer: Mean Earnings Estimates are calculated by First Call based on the earnings projections made by the analysts who cover Hovnanian Enterprises, Inc. Please note that any opinions, estimates or forecasts regarding Hovnanian Enterprises, Inc.'s performance made by these analysts (and therefore the Mean estimate numbers) are theirs alone and do not represent opinions, forecasts or predictions of Hovnanian Enterprises, Inc. or its management. Hovnanian Enterprises, Inc. does not by its reference above or distribution imply its endorsement of or concurrence with such information, conclusions or recommendations.

Build: 093 - KHOVWEB02

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Hovnanian Enterprises, Inc. – Summary Financial Projection

($ million except per share data or where noted)	Fiscal Year ending October 31, 2002	2003	2004	2005 Projection (New)	2005 Change
Consolidated Home Deliveries[1]	**9,514**	**11,531**	**14,586**	**> 16,200**	**> 11%**
Homebuilding Revenues ($ billion)	$2.5	$3.2	$4.1	> $5.3	
Total Revenues ($ billion)	**$2.6**	**$3.2**	**$4.2**	**> $5.5**	**> 31%**
Average Sales Price ($000)	$259	$271	$280	$320 – $325	
Homebuilding Gross Margin [2]	**22.0%**	**25.5%**	**25.5%**	**26.0% – 26.5%**	
Total SG&A % [3]	**9.7%**	**10.0%**	**9.5%**	**10.0% – 10.2%**	
Interest Expense % [4]	3.1%	2.7%	2.5%	2.4%	
Income Tax Rate	39.0%	37.5%	36.6%	39.0% - 39.5%	
Financial Services Pretax Income	$18.2	$22.9	$25.5	$22.0 - $23.5	
Net Income[8]	**$138**	**$257**	**$349**	**> $459**	**> 32%**
Earnings Per Share *(fully diluted)*[8]	**$2.14**	**$3.93**	**$5.35**	**> $7.00 [5]**	**> 31%**
EBITDA[6]	**$311**	**$501**	**$678**	**> $915**	**> 35%**
EBITDA / Interest Incurred	**5.6x**	**7.5x**	**7.7x**	**> 8.0x**	
Debt/EBITDA[7]	**2.1x**	**1.6x**	**1.5x**	**1.8x**	
Stockholder's Equity (Common)	**$563**	**$820**	**$1,192**	**> $1,640**	**> 38%**
Weighted Avg. # Shares (million)	64.3	65.5	65.1	65.6	

Financial Projection as of September 8, 2005.

(1) Excluding deliveries from unconsolidated joint ventures.

(2) Homebuilding Gross Margin as % of Homebuilding revenues; Interest in Cost of Sales not included in Homebuilding Gross Margin calculation.

(3) Including corporate expenses; as % of total revenues.

(4) As % of cost of sales.

(5) Fiscal 2005 projection includes (i) estimated land sale revenues and pre-tax profits, and (ii) estimated net income from unconsolidated joint ventures of approximately $0.24 per diluted share.

(6) EBITDA is a non-GAAP financial measure. The most directly comparable GAAP financial measure is net income. EBITDA represents earnings before interest expense, income taxes, depreciation, amortization and other non-recurring write-offs.

(7) Based on recourse debt at year end; year end 2005 ratio includes all debt resulting from recent acquisitions but does not include LTM EBITDA from those acquisitions.

(8) After preferred dividends; EPS is per common share.

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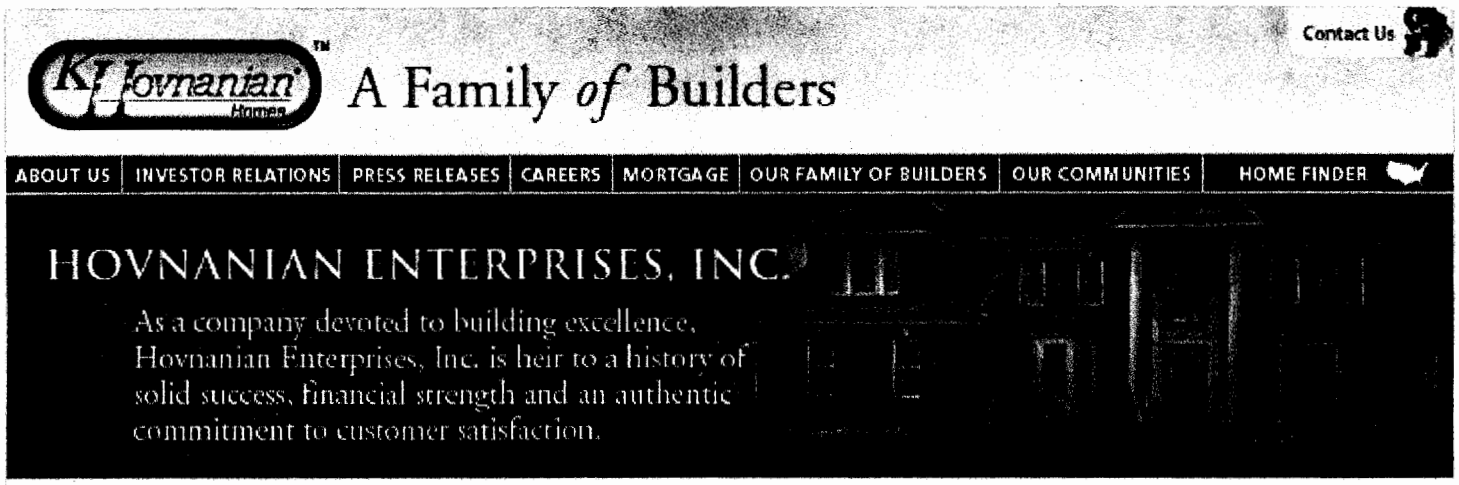

Governance

Hovnanian Enterprises's

Commitment to Corporate Governance

At Hovnanian Enterprises, Inc. ("Hovnanian"), we are committed to sustaining our shareholder's investment through conduct that is in accordance with the highest levels of integrity. We have operated with that standard for more than 40 years.

Our vision is to "become **THE BEST** homebuilder and provider of related financial services in the Nation in the eyes of our customers, our associates, our business partners and our shareholders." This can only be achieved through responsible and ethical dealings with the financial community and in the residential communities in which we build.

We believe in Corporate Governance and are committed to promoting corporate policies and practices that ensure the quality and integrity of the corporation's financial statements. We are committed to reporting financial results that fairly reflect the results of our operations and urge every associate to make decisions based on facts and thorough analysis.

Our commitment to Corporate Governance is reflected by some of the internal practices and conduct discussed below. *For additional information on Corporate Governance, see Directors & Officers, Committee Composition, Guidelines, Code of Ethics, Insider Transactions Director & Officer Ownership, SEC Filings.*

- We require that our senior operations and financial managers certify on a consistent basis as to the accuracy of the financial information which is reported;
- We take seriously the responsibility of our managers to oversee the effectiveness of internal controls;
- We have established internal policies and procedures, which includes an Ethics Hotline, for the anonymous reporting of complaints related to accounting controls, auditing, or other financial matters;
- We have modified our Board Committee Charters and checklists to be consistent with new SEC and NYSE regulations concerning Corporate Governance;
- Our Company has an Audit Committee and Compensation Committee to assist the Board of Directors in fulfilling their responsibilities;
- All members of the Board Committees are independent;
- We have established a Code of Ethics for all of our associates including our senior financial management team;
- Our independent accountants, Ernst and Young, report directly to the Audit Committee;

Build: 093 - KHOVWEB01

Page Address

DRAFT – DRAFT – DRAFT
Revised 5/3/04

Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy for Violations of the Construction Storm Water Requirements

This document provides additional guidance to Agency staff for calculating a bottom line settlement penalty for violations of construction-related Clean Water Act (CWA) storm water requirements, including violations of National Pollutant Discharge Elimination System (NPDES) storm water permits for construction activity. Because the 1995 Interim Clean Water Act Settlement Penalty Policy (1995 CWA Penalty Policy) was developed to address violations of NPDES permits associated primarily with waste treatment facilities and containing numeric effluent limits, it is not easily applied to storm water cases. This guidance, together with the attached worksheets, will help clarify how to calculate settlement penalties in construction storm water cases, and will promote national consistency.

PENALTY CALCULATION METHODOLOGY

As stated in the 1995 CWA Penalty Policy, a settlement penalty is calculated using the following formula:

Penalty = (Economic Benefit) + (Gravity) +/- (Gravity Adjustment Factors) - (Litigation Considerations) - (Ability to Pay) - (Supplemental Environmental Projects)

The 1995 Penalty Policy discusses each component of the penalty calculation. This supplemental guidance addresses economic benefit, gravity, gravity adjustment factors, and litigation considerations specifically for construction storm water cases. Agency staff should, however, continue to refer to the 1995 Penalty Policy for guidance on the basic principles of all the penalty components (*www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf*). Attachment 1 contains a worksheet for calculating the bottom line settlement penalty for construction storm water cases.

A. Economic Benefit

Estimating the economic benefit of non-compliance in construction storm water cases is generally the same as in other CWA penalty cases. Economic benefit results from a number of potential avoided or delayed costs associated with the failure to undertake each of several types of construction activity requirements:

1. Failure to obtain NPDES permit coverage (BEN_{Permit});
2. Failure to develop an adequate SWPPP (BEN_{SWPPP});
3. Failure to implement storm water controls (Best Management Practices or BMPs) (BEN_{BMPs});
4. Failure to inspect BMPs ($BEN_{Inspect}$); and,
5. Failure to maintain BMPs ($BEN_{Maintenance}$).

Thus, depending upon the available facts of a given set of violations, the total estimated economic benefit of non-compliance could be expressed as:

$$\mathbf{BEN_{Total} = BEN_{Permit} + BEN_{SWPPP} + BEN_{BMPs} + BEN_{Inspect} + BEN_{Maintenance}}$$

In order to derive a Total BEN, separate runs of the BEN model should be made, as applicable, for the avoided and delayed costs associated with each of the five construction activities identified above.[1] The avoided and delayed costs associated with each of these construction activities are discussed in detail below, along with guidance on how to apply the BEN model to each type of violation. Where case-specific cost information (*e.g.*, obtained via CWA §§308 or 309(a) authorities) is available, it should be used as inputs for the BEN model. However, in instances where case-specific cost information is not available, the case developer should use reasonable estimates of those costs. This guidance provides recommended sources of information for certain estimated costs in Attachment 3. If estimated costs are used and, during negotiations, actual cost information becomes available, BEN can be revised accordingly.

1. BEN_{Permit}

a. The costs of obtaining a permit may be treated as either a delayed or avoided cost, depending upon the facts of the specific case. For example, EPA may have evidence that permit coverage was sought late, after construction had commenced but before it was completed, in which case it is a delayed cost. If permit coverage was never obtained prior to completion of the construction project, then it is an avoided cost and the date when construction was completed and the site stabilized should be used in the BEN Model as the final compliance date.

b Permit application costs vary from state-to-state and can range from $0 to $1000. When calculating BEN for this requirement, use the actual application fee for the state where the construction is occurring. EPA's *Economic Analysis of the Final Phase II Storm Water Rule* (October 1999) estimates the cost of completing the Notice of Intent (NOI) form to be $126.50. If you use an estimated cost for completion of the NOI, and the actual cost later becomes available, this portion of the BEN can be revised accordingly. Note that NOI costs and administrative costs may be included in some average cost estimates for BMP implementation and in such cases a separate BEN calculation for NOI costs should not be done.

[1] All five factors may not be relevant in all cases.

2. **BEN_{SWPPP}**

a. The cost of developing an adequate SWPPP may be treated as either a delayed or avoided cost, depending upon the facts of the specific case. For example, EPA may have evidence that a SWPPP was developed late, after construction had commenced but before it was completed, in which case it is a delayed cost. If a SWPPP was not developed prior to completion of the construction project, then it should be regarded as an avoided cost and the date when construction was completed and the site stabilized should be used in the BEN Model as the final compliance date.

b. The cost of developing a SWPPP will vary depending upon the scope, complexity and anticipated duration of construction activities. Use actual cost data where it is available. In the absence of actual cost data, refer to Attachment 3 for sources of general cost estimates for SWPPP development.

3. **BEN_{BMPs}**

a. The cost of implementing BMPs can also be treated as either a delayed or avoided cost, depending upon the facts of the specific case. For example, EPA may have evidence that BMPs were installed late, after construction had commenced but before it was completed, in which case it is a delayed cost. If necessary BMPs were not installed prior to completion of the construction project, then it is an avoided cost, and the date when construction was completed and the site stabilized should be used in the BEN Model as the final compliance date.

b. Actual site-specific and BMP specific cost information is best as individual developers will be able to purchase and install BMPs at different costs in different parts of the country. This information can be obtained from invoices, copies of contracts for supplies, etc. In the absence of site-specific information, there are several sources of BMP cost information. If the case developer knows which specific BMPs should have been implemented, refer to the sources listed in Attachment 3 for a good cross section of BMPs and costs. Note that some cost estimates include maintenance costs while others do not. In addition, Appendix B of the *Development Document for Construction and Development Proposed Effluent Guidelines* (June 2002) includes tables which estimate the number of erosion and sediment control items needed for different sizes and types of sites.

If the case developer does not have information relating to which specific BMPs are needed, he or she can refer to Table 5C-1 in Appendix 5C of EPA's *Economic Analysis of Proposed Effluent Guidelines and Standards for Construction and Development* (May 2002), or Exhibit 4-8 in EPA's *Economic*

Analysis of the Final Phase II Storm Water Rule (October 1999) for average costs of erosion and sediment controls.

4. **BEN** $_{\text{Inspect}}$

a. The cost of doing storm water inspections should always be considered an avoided cost in those instances where there is no evidence on site that an inspection(s) has been performed in accordance with permit requirements. Each time a required inspection was not conducted is an additional avoided cost.[2]

b. When calculating BEN for avoided inspections, costs should be based on the hourly wage of inspectors in the area multiplied by the amount of time it would take to do an inspection of the particular site at issue. This latter figure will vary depending on the area of the construction site disturbed. This information may be obtainable by a review of the SWPPP and phasing plans.

5. BEN $_{\text{Maintenance}}$

a. The cost of maintaining BMPs may also be treated as either a delayed or avoided cost, depending upon the facts of the specific case. For example, if BMPs were installed late, after construction had commenced but before it was completed, then the maintenance function will have also started late, and is a delayed cost. If necessary BMPs were not installed prior to completion of the construction project, then of course they were not maintained and this is an avoided cost, and the date when construction was completed and the site stabilized should be used in the BEN Model as the final compliance date. Where BMPs were installed (either on time or late) and have not been maintained, this is an avoided cost and the number of months of violation will be determined by reviewing inspection reports to determine when the deterioration was first noted and how long it continued without repair. If inspection reports or logs are not available or incomplete, estimate the length of time based on your best professional judgement.

b. Actual site-specific costs for maintaining a particular BMP should be used where those figures are available through invoices, etc. Where such costs are not available, the case developer may use estimates from industry sources within the area where the construction is occurring, or use general cost estimates such as those found in the references listed in Attachment 3. If actual costs are obtained during negotiations, these figures can be substituted, as appropriate.

[2]EPA may gather evidence of the lack of such required inspections through the use of information request letters and/or discovery once the case is filed.

B. Gravity Component

In general the following formula should be used for calculating the monthly gravity component:

Monthly Gravity Component = (B + D) x $1000

This formula differs from the gravity formula in the 1995 CWA Penalty Policy.[3] It does not include a monthly constant of "1" or an A or C factor (Significance of Violation and Number of Effluent Limit Violations, respectively). The A and C factors are not included here because most storm water general permits do not contain numeric effluent limits, and they are therefore not applicable. Please note, however, that for those storm water cases where the applicable permit establishes effluent limits and monitoring requirements, Agency staff must perform an analysis of the A and C factors using the tables and guidance in the 1995 CWA Penalty Policy in addition to the B and D factor analysis. In those cases, the monthly gravity would be (1 + A + B + C + D) x $1000, as stated in the 1995 CWA Penalty Policy. Attachment 2 contains a worksheet for calculating gravity.

1. Factor "B" – Health and Environmental Harm

A value for this factor is selected for each month in which one or more violations present actual or potential harm to human health or to the environment. Values are selected using the matrix below. The matrix identifies the appropriate B Factor range based on (1) the water quality classification, (2) whether impacts are actual or potential, and (3) whether human health or the environment was impacted.

To use the matrix, first classify the quality of the "pertinent" receiving water as "high", "medium", or "low" in accordance with this supplemental guidance. The "pertinent" receiving waters include the receiving waters at the immediate point of discharge from the construction site, but may also include waters farther downstream. Agency staff should use best professional judgement to determine which receiving waters should be considered based on the construction site's potential to impact, or contribute to impacts on, the downstream receiving waters. Agency staff should consider, for example, the distance from the discharge point to downstream waters, stream flow (velocity and quantity), and the sensitivity of the downstream waters. If assessing the B Factor for both the immediate and downstream receiving waters, the highest Water Body Classification should be selected.

After determining the quality of the "pertinent" receiving water, then, for each month of violation, determine whether there were actual or potential impacts to either human health or the environment. Using the guidance below, select a B value from this range. If there are impacts, or potential impacts, to both human health and the environment, select the higher of the two B Factor values for each month.

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[3] The 1995 CWA Penalty Policy contains the following gravity formula: Monthly Gravity Component = (1 + A + B + C + D) x $1000.

a. Water Body Classification

(1) "High" Classification

For purposes of this matrix, a receiving water can be characterized as a "High" quality water where the designated or actual uses include at least one of the following:

- It is designated or used as a source of public water supply.
- It is used for shellfish harvesting without depuration.
- It provides high quality habitat for fish, other aquatic life and wildlife.
- It provides habitat for endangered species.
- It is used for primary and secondary contact recreation.
- It is designated (1) an Outstanding Natural Resource Water, (2) a Wild and Scenic River, or (3) is otherwise a sensitive water, providing, for example, a critical ecological use such as excellent cold water fish habitat or anadromous fish passage.

(2) "Medium" Classification

The receiving water can be characterized as a "Medium" quality water where the designated or actual uses include at least one of the following:

- It is suitable as a source of public water supply with appropriate treatment.
- It is suitable for shellfish harvesting with depuration.
- It provides less than high-quality habitat for fish, other aquatic life and wildlife.
- It is suitable for secondary contact recreation.
- It is suitable for irrigation and other agricultural uses and for compatible industrial cooling and process uses.

(3) "Low" Classification

The receiving water can be characterized as a "Low" water quality water in those cases where it does not meet the criteria for either high or medium water quality. A potential example of a "Low" quality receiving water could be a heavily industrialized shipping channel.

b. Impact on Human Health

Impacts to human health could result from construction-related storm water discharges containing sediment, acidic wastewater, oil and grease, or toxics (including fertilizers, pesticides and herbicides, paint and other construction materials). In selecting a B Factor from the range identified in the matrix for actual or potential impacts to human health, consider the following:

(1) interference with drinking water supplies;
(2) harm or increased risks to subsistence or commercial fishing;

(3) harm or increased risks to shellfish harvesting;
(4) causing or contributing to stream instability,
(5) interference with primary or secondary contact recreation; and
(6) site-specific or local rainfall data, where available.

Examples of interference with drinking water supplies include the need to close a drinking water intake, or the need to alter the treatment process or add additional treatment, following discharges. Impacts to subsistence or commercial fishing may result in the need to issue new fish advisories. Streambed instability could result in localized flooding, for example, that could cause property damage and impact public health due to water borne disease or increased habitat for insect pests. Beach closings are an example of impacts to primary contact recreation.

As discussed above, impacts could be actual or potential. Where there is limited or no information on actual impacts, site-specific or local precipitation data can provide insight into potential impacts during each month of violation. For example, consider the potential risk or impact to public health if a construction site is directly upstream of a drinking water intake or public beach, and BMPs at the site were found to be inadequate to prevent runoff of sediment in the event of heavy rainfall. If local data recorded rainfall during a month where violations occurred, then the more days of rain, and the greater the amount and/or intensity of rainfall, the greater the likelihood of harm to public health and the higher the B Factor that should be selected for that month. On the other hand, if the precipitation data indicates that there was no rainfall during the month, and staff can therefore reasonably conclude that there were no storm water discharges, it would be appropriate to assign a 0 value for Factor B for that month.

c. Impact on the Environment

In addition to potential impacts on human health, impacts to the environment could also result from construction-related discharges of storm water containing sediment, acidic wastewater, oil and grease, or toxics. In selecting a B Factor from the range identified in the matrix for actual or potential impacts to the environment, consider the following:

(1) the quantity (*i.e.*, concentration or mass) of sediment, oil, or other pollutant that was discharged, or that could potentially be discharged;
(2) any documented or reasonably presumed impacts or degradation, such as impacts resulting from siltation or the presence of oil sheens;
(3) whether the stream provides habitat to species sensitive to sediment or turbidity (*e.g.*, trout);
(4) whether the stream is on the CWA §303(d) list as impaired by sediments, turbidity or other pollutants which were or could potentially be discharged from the site;
(5) whether fish or other aquatic life were killed, including the number and species of fish or other aquatic life killed;

(6) whether discharges contributed to or caused streambed instability, such as bank erosion or scouring, which could impact habitat; and,
(7) site-specific or local rainfall data, where available.

Where impacts or potential impacts are more significant, the B factor should be selected from the higher end of the range. For example, a fish kill would result in a larger B Factor, especially if the species killed is significant to recreation, commercial fishing or the ecosystem. If BMPs are generally adequate and discharges of pollutants appear minimal, however, a value from the low end of the range should be selected.

Again, where there is limited or no information on actual impacts, site-specific or local precipitation data can provide insight into potential impacts during each month of violation. If the precipitation data indicates that there was no rainfall in any given month in which there were violations, and staff can reasonably conclude that there were no storm water discharges and no potential for harm (for example, no evidence of sediment loading in and around storm drains), it would be appropriate to assign a 0 value for the B Factor in that month. If the data indicates that there has been rainfall, then the more days of rain and the greater the amount and/or intensity of rainfall, the greater the likelihood of environmental harm and the higher the B Factor that should be selected.

B Factor Matrix[4]						
Water Body Classification	**Low**		**Medium**		**High**	
Potential or Actual Harm	Potential	Actual	Potential	Actual	Potential	Actual
Impact on HumanHealth	0 - 5	1 - 10	0 - 15	2 - 25	0 - 25	5 - 50
Impact on Aquatic Environment	0 - 3	1 - 5	0 - 7	2 - 10	0 - 15	5 - 20

[4]The 1995 Interim CWA Penalty Policy sets a range of 10 to 50 for an impact on human health. This supplemental guidance expands the range from 0 to 50 to account for small construction sites that may have had no or minimal impact.

2. Factor "D" - Non-Effluent Limit Violations

Use the D Factor matrix below to calculate a D Factor value for each month in which there was one or more violations. The vertical axis of the matrix lists the possible types of violations at construction sites. The horizontal axis reflects the number of acres of disturbed soil at the site. Each box in the matrix provides a range of possible values for each type of violation.

In calculating a D Factor value for each month, select the applicable boxes in the matrix based on the types of violations and the number of acres of disturbed soil. The violations will fall under one of two general categories, either "Violation of Applicable Permit," or "Failure to Obtain a Permit." Under the second category, failure to obtain a permit, Agency staff will select a D Factor from the appropriate box in the matrix using the guidance below. For those violations that constitute NPDES permit violations, the D factor values for each applicable sub-category of violation are added together to obtain the total D Factor value for each month as follows:

D Factor for Permit Violations = (1.a) + (1.b.) + (1.c.i) + (1.c.ii) + (1.c.iii.) + (1.d.)

Although the range of values in the matrix begins at 0.1 for some types of violations, a value between 0.1 and one should only be used for sites with minor violations (*e.g.*, a value of 0.5 may be used to calculate a gravity component of $500 per month if appropriate for the site and the violation). Any D Factor value above 1 should be a whole number.

The guidance below addresses each category of violation and provides direction in selecting a value within the ranges provided in the matrix.

Violation Type 1 - Violation of Applicable NPDES Permit

a. No SWPPP

Apply a D Factor value monthly from the construction start date until the SWPPP is completed. In selecting a specific value from within the range, consider the actual or potential impact that the lack of a SWPPP had,or could have, on the control of and quality of storm water discharges from the site. For example, if the operator developed and implemented a locally-required erosion and sediment control plan that covered most of the requirements of the federal (or state, where appropriate) SWPPP, and exhibited good control of discharges from the site, then a figure from the lower end of the range should be selected. Conversely, if the operator did not have a strong erosion and sediment control plan, or did not exhibit good control of storm water discharges from the site, then a figure from the middle to higher end of the range should be selected. This category of violation assesses the overall impact the lack of SWPPP had on the site. Inadequacies relating to specific BMPs are addressed in the matrix under 1.c.

b. Inadequate SWPPP

Apply a D Factor value from this violation category monthly from the construction start date until the SWPPP is amended to include all the necessary elements (*e.g.,* site description; proper signatures and certifications; required information on presence of endangered species and historic properties; description and location of erosion, sediment and stabilization controls that must be in place). In selecting a value, consider the overall degree of inadequacy and the significance of inadequate elements to the control of storm water and other discharges from the site. Inadequacies relating to specific BMPs are addressed in the matrix under 1.c.

c. Inadequate BMPs or Inadequate Implementation of SWPPP

This category of violation includes the following three subcategories: (i) missing BMPs; (ii) BMPs not properly implemented or maintained; and (iii) any other deficiencies. Agency staff should determine a D value for each of these subcategories, where applicable, and add the values together to get the total D factor value for *inadequate BMPs or inadequate implementation of SWPPP* for each month of violation.

(i) *Missing BMPs*

Apply a D Factor value from this violation category for those months where you can reasonably determine (through, for example, inspections or information requests) that certain BMPs should have been, but were not, implemented. In selecting a value from within the range, Agency staff should consider the number and types of missing BMPs in relation to the characteristics of the site. The value for missing BMPs should be higher where the number of missing BMPs is higher, and/or the importance of the missing BMPs is greater. In evaluating the significance of the missing BMPs, Agency staff should consider site-specific factors such as the topography, including slope of the site, erosivity of the soil, and the amount of buffer vegetation left on the site.

In judging the degree to which the lack of BMPs have impacted the control of storm water discharges at the site, evaluate the following:

- ***Sediment and erosion control practices***
  - Stabilization practices.
  - Structural erosion and sediment control practices.
- ***Offsite vehicle tracking of sediments***
- ***Good housekeeping*** (*e.g.*, debris receptacles, trash pickup, street sweeping, etc.)
- ***Waste disposal***
  - Construction wastes.
  - Hazardous wastes.
  - Equipment maintenance fluids including oil and grease.
  - Acidic wastewater.
  - Contaminated soils.

Concrete truck washout.

- ***Materials management***
  - Pesticides.
  - Petroleum products.
  - Fertilizers.
  - Detergents.
  - Hazardous products.

Other (*e.g.*, concrete/asphalt batch area, location and maintenance of port-a-potties, etc.)

(ii) *BMPs Not Properly Designed, Implemented or Maintained*

Apply a D Factor value from this violation category for those months where you can reasonably determine (through, for example, inspections or information requests) that BMPs were not properly designed, implemented or maintained. In selecting a value from the ranges in the matrix, consider the number and types of inadequacies, as well as the site-specific factors outlined above (*e.g.*, topography, soil erosivity, and the impact of failing to properly design, implement and maintain BMPs on the control of storm water discharges at the site). The value for improper BMP design, maintenance and implementation should be higher where the number of improperly designed, implemented or maintained BMPs is higher, and/or where the improperly implemented or maintained BMPs have greater significance in controlling the discharge of pollutants from the site. Agency staff should evaluate:

- Whether Major Activities were conducted in sequence.
- Whether BMPs were properly designed.
- Whether BMPs were installed per design specifications.
- Whether BMPs were properly located.
- Whether BMPs were properly maintained.
- The significance of improperly designed, installed or maintained BMPs to control of storm water discharges.

(iii) *Any Other Deficiencies*

Apply a D Factor value for this violation category for each month that there are any other deficiencies in the implementation of the SWPPP (*e.g.*, inspections were not conducted, inspections were not documented, the SWPPP was not updated to reflect actual activities, etc.).

In selecting a value from the range, consider the importance of the deficiencies to the control of the discharge of pollutants from the site. If, for example, inspections were not conducted and documented in a dry month where the permit required only a minimum number of inspections (*e.g.*, every two weeks), a penalty from the low end of the range should be selected. If it was a wet month with storm events above the permit's 0.5 inch (or other appropriate) threshold for conducting additional inspections, a penalty from the middle or high end of the range should be selected.

d. Failure to File a Notice of Termination (NOT)

Apply a D Factor value for this category of violation for each month the developer failed to file an NOT after completing construction and stabilizing the site. The penalty for such failure should be nominal if the site was stabilized within the time required by the NPDES permit (usually two weeks) after completion of construction.

Violation Type 2 - Failure To Obtain a Permit / Discharge Without a Permit

For those sites where the owner/operator has failed to obtain a permit, EPA can only allege two types of violations: (1) the failure to submit a Notice of Intent (NOI) in order to obtain permit coverage, which is a violation of Section 308 of the Clean Water Act, and (2) if there is evidence of a discharge, a discharge without a permit. Apply a D Factor value for the *failure to obtain a permit* monthly from the construction start date until the permit application is submitted and becomes effective. In selecting a figure from within the range in the matrix, consider whether any discharges without a permit have been documented. The value should be higher where EPA has evidence of one or more discharges. In addition, consider the size and sophistication of the operator. The value should be higher for those operators that are large, sophisticated and have developed multiple sites; conversely, the value should be lower for a small operator, new to construction, that is developing a single site. Also, if historically there has been extensive outreach in the area regarding the need for permit coverage, a figure from the higher end of the range should be selected. Finally, consider any "functional equivalencies" that may exist on the site. For instance, there is likely to be no SWPPP where the owner/operator has no permit; however, there may be a locally-required erosion or sediment control plan that contains many of the SWPPP requirements. Additionally, the owner/operator may have implemented many (if not all) of the erosion and sediment control BMPs that a SWPPP would have required. On the other hand, BMPs may be missing, inadequate, improperly implemented, or inadequately maintained. To help evaluate these "functional equivalencies" and select a D Factor value from within the matrix range, Agency staff may use the ranges offered in the D Factor Matrix under "Violations of Applicable Permit" as a **tool** to help determine an appropriate value for "Failure to Obtain a Permit.

"D" Factor Matrix[5]					
Types of Violations	**Acres of Disturbed Soil**				
	1 - 10	**11 - 25**	**26 - 50**	**51 - 100**	**>100**
1. Violation(s) of Applicable Permit					
a. No SWPPP	0.1 - 3	0.5 - 4	0.5 - 5	1 - 7	1 - 15
b. Inadequate SWPPP	0.1 - 2	0.1 - 3	0.1 - 4	1 - 5	1 - 7
c. Inadequate BMPs or implementation of SWPPP					
i. ***Missing BMPs, (including failure to stabilize the site.)***	0.1 - 4	0.1 - 7	1 - 10	1 - 15	1 - 20
ii. ***BMPs not properly designed, implemented or maintained.***	0.1 - 3	0.1 - 5	1 - 7	1 - 10	1 - 15
iii. ***Any Other deficiencies (e.g. inspections not conducted or documented)***	0.1 - 2	0.1 - 4	0.1 - 5	1 - 7	1 - 15
d. Failure to file an NOT	0.1 - 2	0.1 - 2	0.1 - 2	1 - 2	1 - 2
2. Failure to Obtain a Permit	0.1 - 10	0.5 - 17	0.5 - 22	1 - 31	1 - 52

[5]D Factor values above one must be whole numbers.

3. Gravity Adjustment Factors

The following gravity adjustment factors should be considered when determining the final figure for the gravity component of a penalty for construction storm water violations.

a. Civil Monetary Penalty Inflation Adjustment

The Office of Enforcement and Compliance Assurance's (OECA's) May 9, 1997, memorandum, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)," requires the preliminary gravity component calculated in accordance with the 1995 Penalty Policy to be increased by 10% for those violations occurring on or after January 31, 1997.[6] This 10% increase has been incorporated into the B and D Factor matrices contained in this supplemental guidance for violations of the construction storm water regulations. However, if the penalty inflation adjustment is increased above10%, then Agency staff will need to increase the gravity amount as appropriate.

b. Other Gravity Adjustment Factors

The 1995 Penalty Policy discusses three potential gravity adjustment factors: (1) Flow Reduction Factor for Small Facilities, (2) History of Recalcitrance Adjustment Factor, and (3) Quick Settlement Adjustment Factor. The Flow Reduction Factor for Small Facilities applies to industrial and municipal treatment facilities and as such is not applicable to construction-related storm-water violations. Refer to the 1995 CWA Penalty Policy for guidance on applying the recalcitrance and quick settlement adjustment factors which may apply to a construction-related storm water case (*www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf*).

C. Litigation Considerations

With the exception of the National Municipal Litigation Consideration (NMLC), Agency staff may consider whether any of the litigation considerations discussed in the 1995 CWA Penalty Policy are appropriate. Refer to the 1995 CWA Penalty Policy for guidance on applying the litigation considerations (*www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf*).

The NMLC is not appropriate for construction-related storm water cases despite the fact that the owner/operator may be a municipality. Under the 1995 Penalty Policy, this consideration may be appropriate where a small municipality failed to comply despite its good faith efforts. The NMLC was developed primarily for cases where large capital expenditures were to be made. Because BMPs under the storm water program are relatively inexpensive and easily implemented and maintained, they are not appropriate for the NMLC.

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[6] This adjustment factor is periodically reviewed and may be revised.

D. Ability to Pay

Refer to the1995 Clean Water Act Penalty Policy for guidance on applying the ability to pay adjustment factor (*www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf*).

E. Supplemental Environmental Projects

Refer to the 1995 Clean Water Act Penalty Policy and the Agency's Supplemental Environmental Projects (SEP) Policy for guidance on applying the SEP adjustment factor for construction storm water penalties.

ATTACHMENT 1 TO SUPPLEMENTAL GUIDANCE TO INTERIM CLEAN WATER ACT SETTLEMENT PENALTY POLICY (MARCH 1, 1995) FOR VIOLATIONS OF THE CONSTRUCTION STORM WATER REQUIREMENTS

Case Name: Date:

Prepared by:

SETTLEMENT PENALTY CALCULATION WORKSHEET

STEP	AMOUNT
1. Calculate Statutory Maximum Penalty (period of violations from _____ through _____)	
2. Economic Benefit (attach BEN printouts, with explanations for inputs/calculations)	
3. Total of Monthly Gravity Amounts (using Attachment 2 for each month of violation)	
4. Economic Benefit + Gravity (lines 2 + 3)	
5. Gravity Adjustments	
a. Recalcitrance Factor _____ (0 to 150%) X line 3	
b. Civil Monetary Penalty Inflation Adjustment + 10% (if appropriate)	
c. Quick Settlement Reduction _____ (0 or 10%) X line 3	
d. Total Gravity Adjustments (negative amount if net gravity reduction) (lines 5.a. + 5.b. - 5.c.)	
6. Preliminary Penalty Amount (lines 4 + 5.d.)	
7. Litigation Consideration Reduction (if any)	
8. Ability to Pay Reduction (if any)	
9. Reduction for Supplemental Environmental Projects (if any)	
10. **BOTTOM LINE CASH SETTLEMENT PENALTY** (line 6 less lines 7, 8 and 9.)	

ATTACHMENT 2: GRAVITY WORKSHEET

Case Name _____
Preparer _____
Date Prepared _____
Number of Acres Disturbed_____

Month	B Factor	D Factor								TOTAL GRAVITY (B+D) x $1000
		1.a.	1.b.	1.c.i.	1.c.ii	1.c. iii.	1.d.	2	D Total	
TOTAL:										

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ATTACHMENT 3

LIST OF COST REFERENCES FOR CALCULATING ECONOMIC BENEFIT FOR CONSTRUCTION STORM WATER CASES

1. Costs of developing a SWPPP:

- *Economic Analysis of the Final Phase II Storm Water Rule, Final Report* (October 1999), Exhibit 4-9. (Available on EPA's Storm Water web site under Publications)

- *Caltrans Storm Water Quality Handbooks, Project Planning and Design Guide*, September 2002, Appendix F: California Department of Transportation (Caltrans) estimates $2000-$4000 for sites < 5acres and $5000-$10,000 for sites > 5acres. http://www.dot.ca.gov/hq/oppd/stormwtr/PPDG-stormwater-2002.pdf, Appendix F.

2. Implementation of BMPs

- R.S. Means, *"Site Work and Landscape Cost Data,"* 19th Edition (2000) (http://www.rsmeans.com)

- BMP Fact Sheets, EPA's Phase II "Menu of BMPs, http://cfpub.epa.gov/npdes/stormwater/menuof bmps/con_site.cfm

- *Development Document for Proposed Effluent Guidelines and Standards for the Construction and Development Category* (June 2002), Section 5.1.5 Technical Assessment and Appendix B. (www.epa.gov/waterscience/guide/construction/devdoc.htm)

- February 17, 1998, EPA NPDES Permit, Table 1 - "Sediment and Erosion Control Costs", Federal Register / Vol. 63, No. 31 / Tuesday, February 17, 1998 / Notices, page 7897.

- General cost estimates for Phase II Erosion and Sediment Control: Table 5C-1 in Appendix 5C, *Economic Analysis of Proposed Effluent Guidelines and Standards for Construction and Development Category* (May 2002) (www.epa.gov/waterscience/guide/construction/econ.htm)

- General cost estimates for Phase II Erosion and Sediment Control: Exhibit 4-8, Chapter 4, *Economic Analysis of the Final Phase II Storm Water Rule, Final Report* (October 1999). (Available on EPA's Storm Water web site under Publications)

- BMP Fact Sheets, Storm Water Management for Construction Activities – Developing Pollution Prevention Plans and Best Management Practices", EPA 832-R-92-005.

- *Caltrans Storm Water Quality Handbooks, Project Planning and Design Guide* (September. 2002), Appendix F - Cost Estimates: (www.dot.ca.gov/hq/oppd/stormwtr/PPDG-stormwater-2002.pdf)

- *California Stormwater BMP Handbook for Construction* (January 2003), (www.cabmphadbooks.com)

3. Maintenance of BMPs

- General cost estimates: *Cost Analysis, Washington Department of Ecology Year 2001 Minimum Requirements for Storm Water Management in Western Washington* (August 2001): The Washington Dept. of Ecology has estimated a range of $8,400-$14,500 for BMP maintenance/repair over a twelve month period, depending upon site conditions (http://www.ecy.wa.gov/programs/wq/stormwater/cost_rpt.pdf).

4. Inspections

- *Economic Analysis of the Final Phase II Storm Water Rule, Final Report* (October 1999), Exhibit 4-9. (Available on EPA's Storm Water web site under Publications)

Why is sediment important?

Sediment carried in water has a variety of effects. What are they and why are they important?

- Toxic chemicals
- Navigation
- Fisheries / Aquatic habitat

Toxic chemicals

Sediment plays a major role in the transport and fate of pollutants and so is clearly a concern in water quality management. Toxic chemicals can become attached, or adsorbed, to sediment particles and then transported to and deposited in other areas. These pollutants may later be released into the environment. By studying the quantity, quality, and characteristics of sediment in the stream, scientists and engineers can determine the sources and evaluate the impact of the pollutants on the aquatic environment. Once the sources and impact are known, action can be taken to reduce the pollutants. The association of toxic chemicals with sediment is an issue of national importance.

Navigation

Deposition of sediment in rivers or lakes can decrease water depth, making navigation difficult or impossible. To ensure access, some of the sediment may be dredged from the stream or harbour, but this may release toxic chemicals into the environment. To determine how much dredging needs to be done and how often, water levels must be monitored, and the rates of sediment transport and deposition estimated. Sedimentation of navigation channels is a concern in the Fraser River (British Columbia), the Mackenzie River (Northwest Territories), and the Great Lakes - St. Lawrence system (Ontario and Quebec).

Fisheries / Aquatic habitat

Streamborne sediment directly affects fish populations in several ways:

- Suspended sediment decreases the penetration of light into the water. This affects fish feeding and schooling practices, and can lead to reduced survival.
- Suspended sediment in high concentrations irritates the gills of fish, and can cause death.
- Sediment can destroy the protective mucous covering the eyes and scales of fish, making them more susceptible to infection and disease.
- Sediment particles absorb warmth from the sun and thus increase water temperature. This can stress some species of fish.
- Suspended sediment in high concentrations can dislodge plants, invertebrates, and insects in the stream bed. This affects the food source of fish, and can result in smaller and fewer fish.
- Settling sediments can bury and suffocate fish eggs.
- Sediment particles can carry toxic agricultural and industrial compounds. If these are released in the habitat they can cause abnormalities or death in the fish.

Forestry

Some forestry practices have negative impacts on the environment. Extensive tree cutting in an area may not only destroy habitat but increase natural water runoff and accelerate soil erosion. These can lead to increased flow and sediment loads in nearby streams. They can also release chemical substances occurring naturally in forest soils, and allow them to contaminate rivers or lakes. Both the chemicals and the additional sediment can harm fish and other organisms. Sediment problems resulting from forestry practices are prevalent in British Columbia, Ontario, Quebec, New Brunswick, and Newfoundland.

Water supply

Sediment can affect the delivery of water. When water is taken from streams and lakes for domestic, industrial, and agricultural uses, the presence of sediment in the water can wear out the pumps and turbines. As this increases maintenance costs, it is important to determine the amount of sediment in the stream so that the appropriate equipment can be chosen when designing a water supply plant.

Energy production

The amount of sediment transported affects both the size and the life expectancy of reservoirs created for power generation. A dam traps sediment that would normally be carried downstream, and that sediment decreases the size of the reservoir and thus its use for power generation. Therefore, it is necessary to know the amount of sediment to ensure the effective design of reservoirs for the long term.

#34

Bog Turtles

Slipping Away

by Andrew L. Shiels
Nongame and Endangered Species Unit

The bog turtle's (*Clemmys muhlenbergii*) story is filled with irony and contradictions. It is Pennsylvania's smallest turtle. Even though it does not require large areas of habitat to survive, its populations have suffered from more problems associated with habitat loss than any other turtle in the Commonwealth. Bog turtles are cute, petite, and very attractive, which makes them an easy animal for people to like and want to protect. However, those same attributes also make this species very desirable in the black market pet trade. It lives in wetlands primarily in the southeastern counties of Pennsylvania. Unfortunately, those areas also have the highest human population densities in the Commonwealth.

Bog turtles prefer to live in spring seeps and open, marshy meadows, which are usually found in flat or gently rolling landscapes of the valleys of southeastern Pennsylvania. Yet, these same areas are also prime locations in which to build homes and housing developments to support the urban and suburban sprawl that centers around the cities of eastern Pennsylvania. Some well-meaning people want to protect this species so much that they actually unknowingly endanger the turtles by removing them from the wild when they are seen crossing roads.

Typically, the turtle is dropped off at a pet store or nature center with little or no information pertaining to where it was picked up. In many cases, these "saved" turtles cannot be released back into the wild because their wetland of origin is unknown. Disease and genetic issues often preclude releasing these individuals in areas other than their native wetland. Bog turtles are listed both as a Pennsylvania endangered species and threatened under the federal Endangered Species Act, and therefore they are protected by special regulations. Consequently, some land developers are concerned that their proposed projects may be affected by its presence.

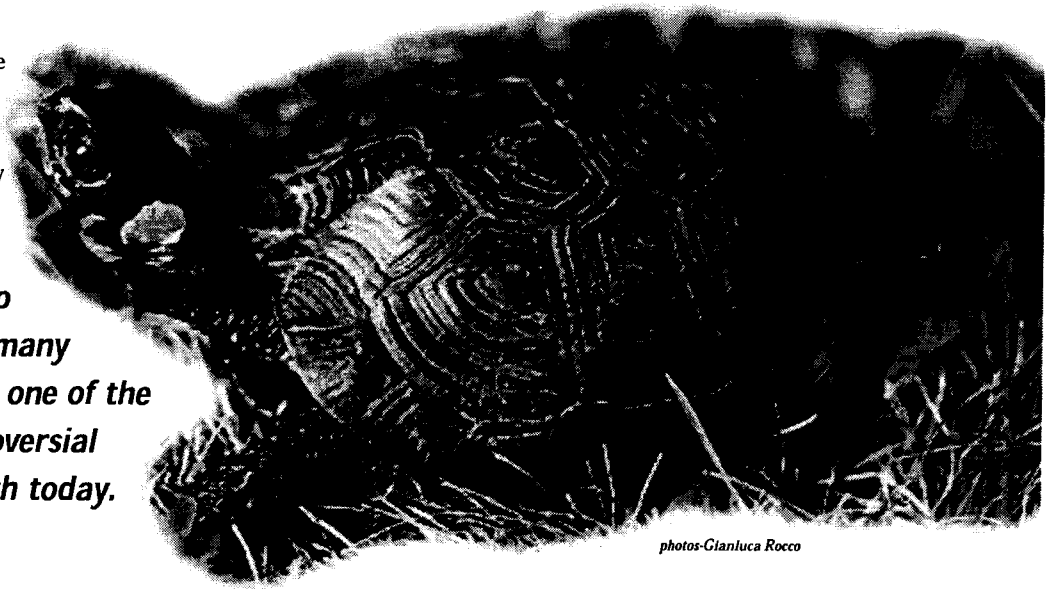
Meanwhile, others see the bog turtle as a barometer for the quality and health of wetlands and watersheds in their communities. This little turtle, which exemplifies so many different things to so many different people, remains one of the most endangered and controversial species in the Commonwealth today.

Description, life history

Bog turtles are small, semi-aquatic turtles typically reaching a maximum shell length of around four inches at adulthood. Their shells are usually mahogany or black. A bog turtle's most identifiable characteristic is the prominent yellow or orange splotch on each side of the head behind the eye. A lack of yellow or light spots on the carapace (upper shell) helps to distinguish this species from the spotted turtle (*Clemmys guttata*), which may also be found inhabiting wetlands where bog turtles live. Bog turtles are long-lived. They reach reproductive age between five and eight years and may live 20 to 30 years, often spending their entire lives in the wetlands where they were born.

Active during the warmer months, they typically emerge from overwintering during April. Basking, eating, and mating occupies the months of April through June. Egg-laying usually occurs in June and July with the young hatching during late August and early September. Bog turtles construct nests in sphagnum or on tussock sedges where the eggs can be deposited above the water level of the wetland. One to six eggs are deposited and left to incubate unattended for approximately six to eight weeks. The eggs and young are preyed on by mice, raccoons, skunks, foxes, and birds. In Pennsylvania, adult and juvenile bog turtles usually enter the mud to overwinter during late September and October. Thus, for at least

The bog turtle exemplifies so many different things to so many different people. It remains one of the most endangered and controversial species in the Commonwealth today.



photos-Gianluca Rocco

half of the year, and for that matter half of their lives, bog turtles exist in a dormant state buried in the mud.

Range

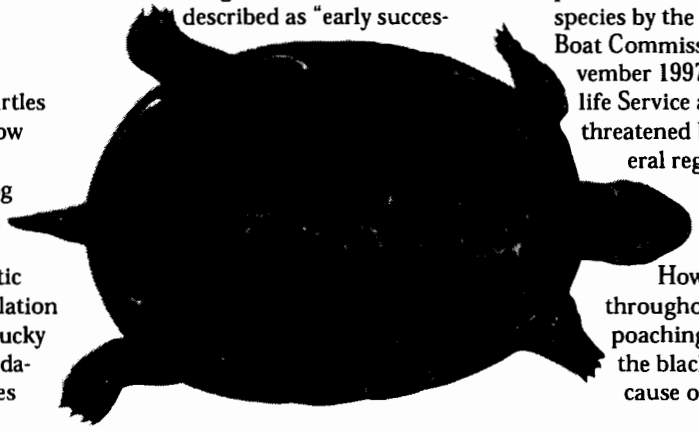
Bog turtles are native to the eastern United States ranging from Georgia to the lower New England states. They have a discontinuous distribution with a 250-mile separation between distinct northern and southern populations. Pennsylvania represents the keystone of the northern population, which extends from Maryland and Delaware through Pennsylvania, New Jersey, New York, Connecticut, and Massachusetts. In Pennsylvania, bog turtles occur in counties of the Commonwealth's southeastern corner. Of course, bog turtles are neither randomly nor abundantly distributed throughout their range. They are habitat specialists that require very specific environmental conditions to ensure their survival.

Habitat

The preferred habitat for bog turtles includes open wet meadows, shallow water marshes, spring seeps, flood plain wetlands, bogs, and fens. Bog turtles live in wetlands that offer a mosaic of wet and dry areas, thus providing a variety of micro-climatic conditions that aid in thermoregulation and egg incubation. Deep, soft, mucky soils allow bog turtles to avoid predators and to escape climatic extremes such as hot and cold temperatures. Groundwater springs, seeps, and subsurface flows provide areas where the turtles can overwinter without the threat of freezing to death. The wetland plants most often found in these areas include cattails, rushes, jewelweed, skunk cabbage, sedges (particularly tussock sedge), sphagnum, and various native grasses. Common trees and shrubs include red maple, alder, willows, and poison sumac.

An open canopy that allows abundant sunlight to reach ground level is an essential component of bog turtle habitat. Bog turtles spend significant periods of their lives basking in the sun. As in all reptiles, proper thermoregulation in bog turtles is vital to the control of metabolic processes. In addition, incubating eggs require appropriate levels of sunlight, warmth, and humidity that are usually lacking in shaded areas.

Prime bog turtle habitat is often described as "early successional." When open, marshy meadows and fields evolve into a forest, they first become inhabited by large shrubs and small trees. As the trees mature, sunlight is intercepted and filtered, and the composition of plants at the ground level and lower canopy changes. Late successional habitat consists of extensive canopy and mature trees. Because bog turtles rely on early and mid-successional habitats, events that cause those areas to remain open are necessary for their survival. Succession is accelerated by runoff of nutrients and erosion of soils into wetlands. Natural and human-induced succession have led to the elimination of bog turtles from areas where they historically occurred.

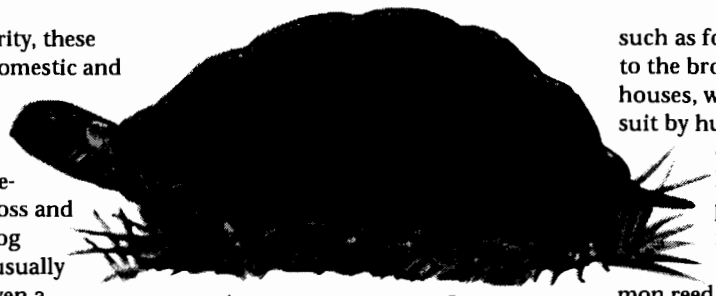


Threats to survival

Illegal Activity. Bog turtles have been protected as a Pennsylvania endangered species by the Pennsylvania Fish and Boat Commission since 1974. In November 1997, the U.S. Fish and Wildlife Service added bog turtles to its threatened list. Under state and federal regulations, it is unlawful to sell, trade, barter, possess, import, export, catch, take, or kill bog turtles. However, in Pennsylvania and throughout the bog turtle's range, poaching has occurred to supply the black market pet trade. Because of their small size, attrac-

photo-Gianluca Rocco; illustration-Ted Waike

tive qualities and overall rarity, these turtles are prized by both domestic and overseas collectors. Because they are slow to mature, have low reproductive rates, and are continually declining because of habitat loss and alteration, the remaining bog turtle populations cannot usually withstand the removal of even a few individuals. Fish and Boat Commission Waterways Conservation Officers and U.S. Fish and Wildlife Service agents are constantly on alert for these threats.



Before becoming federally listed as threatened, bog turtles illegally taken from states where they were protected (which includes all states in their natural range) were easily "laundered" through states outside of their native range. Thus, bog turtles were listed for sale in catalogs from reptile dealers in distant states such as Florida and California where they don't occur naturally. Obviously, these turtles were illegally procured from the wild in states where they were protected. Federal protection under the Endangered Species Act of 1973 eliminates such loopholes.

Invasive plants. Nonnative plants have caused the quality of some bog turtle sites to decline. Two of the most notorious plants are purple loosestrife and common reed. Both nonnative species have colonized many wetland areas in the eastern U.S. These species tend to produce virtual monocultures and out-compete native wetland plants that may have provided food or cover for the bog turtle and other wetland-dependent species. The common reed grows in very thick clumps. These clumps are impenetrable, and they restrict bog turtle movements. They can also grow to heights of eight to 10 feet, thereby shading desirable plant species.

Bog turtles rely on certain native plants for food either in the form of young shoots or the seeds they produce. Also, some plant species such as tussock sedges provide natural nesting sites that are elevated above the water level in the wetland. This allows the eggs to be protected from inundation during water level fluctuations in the wetland. The large, broad leaves of skunk cabbage provide readily accessible areas of shade to provide overhead protection from predators or to assist in the turtle's thermoregulation. Invasive plants that alter the natural composition and diversity of vegetation in the wetland can quickly reduce a wetland's suitability for bog turtles.

Habitat fragmentation. Habitat fragmentation, for a variety of reasons, leads to the demise of bog turtles. Most bog turtle populations were at one time connected by waterways and wetland complexes. This allowed the individuals in adjoining populations to mingle and maintain the genetic fitness of the species. If local conditions were unsuitable, the turtles could migrate to nearby areas in the watershed. Natural succession, which occurred at a slower rate than human-induced succession, would, over time, cause populations to move in search of new areas. However, road construction, draining and filling of wetlands, pollution, and poor land-use practices have caused historic habitats to shrink, be cutoff from one another, or be eliminated altogether. These modern changes occur at rates faster than the rates at which turtles can respond to the alteration. Also, there usually isn't anywhere else to move to.

Fragmentation of habitat causes the amount of edge to increase in proportion to the interior. Increased amounts of edge are preferred by many animals that prey on bog turtle eggs, young, and adults. The spread of southeastern Pennsylvania's suburbia into bog turtle habitat also tends to elevate the populations of predators. These predators such as foxes and raccoons adapt well to the broken habitat and areas close to houses, which protect them from pursuit by hunters and trappers. Habitat disturbance in or along wetland margins also promotes plant species that thrive in newly disturbed habitats.

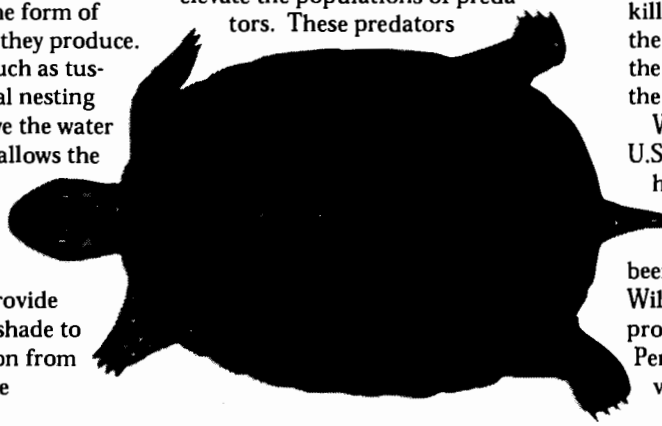


Illustration-Ted Walke

Purple loosestrife and common reed, mentioned earlier, can rapidly colonize disturbed areas, first gaining a foothold, and then spreading into the interior of the wetland. Increased road traffic, whether on new or existing roads, leads to increased possibilities of mortality for turtles that attempt to cross roads. For the most part, bog turtle sites are isolated from one another. Researchers are studying the effects of such isolation in an effort to determine how geographic separation may affect the genetics of those populations.

Saving the bog turtle

Work has been underway for some time by state, federal, and local officials to identify and protect bog turtles and their habitats. Cooperation with nongovernmental organizations such as The Nature Conservancy, various county and local conservancies, university researchers, herpetological specialists, and many interested Pennsylvania residents has helped to reveal locations where they occur, facilitate population studies, and share vital information.

Light to moderate grazing of cattle has been shown in some cases to retard succession in bog turtle wetlands. In the past, beaver dams, which backed up streams and flooded lowlands, causing the trees to die, created open canopies and suitable areas for bog turtles, particularly after the beavers moved on to another site and the dam collapsed. Today, The Nature Conservancy uses techniques such as controlled burning of unwanted vegetation, girdling of trees to kill them, thus opening the canopy, and the use of selected herbicides to control the vegetation in bog turtle habitats that the Conservancy manages.

Waterways Conservation Officers and U.S. Fish and Wildlife Service agents have devoted considerable time and effort to curb poaching and illegal sales of bog turtles. Funding has been provided through the U.S. Fish and Wildlife Service for field work and to produce informational materials. Pennsylvania's Wild Resource Conservation Fund has provided funding for

Bog Turtles
Slipping Away

field surveys, and the production of "Living on the Edge," an educational video about bog turtles in Pennsylvania.

The Fish and Boat Commission, through the Nongame and Endangered Species Unit, reviews hundreds of proposed development projects each year. The project areas are screened for the presence of bog turtles using the Pennsylvania Natural Diversity Inventory (PNDI) database and file information. This database is a cooperative effort among the Department of Conservation and Natural Resources, The Nature Conservancy, and Western Pennsylvania Conservancy along with many researchers. Potential conflicts are resolved through negotiations with project applicants. Where field surveys are required, the Commission in cooperation with the U.S. Fish and Wildlife Service provides technical guidance regarding the proper survey methods to ensure the quality of biological investigations. The Commission maintains a confidential database of known historic and current bog turtle sightings.

The Commission and U.S. Fish and Wildlife Service have conducted joint training sessions with federal, state, and county conservation professionals to educate them in the recognition of bog turtle habitat and the biology of the species. These persons routinely handle various land-use permitting activities at many levels and are valuable assets in the protection of important habitats.

Finally, when the situation warrants, Commission staff have testified in court proceedings to ensure that this species and its habitat are protected. Even though the Commission and U.S. Fish and Wildlife Service have legal responsibility for bog turtles, many other individuals and groups are also interested in its well-being and are active in efforts to protect them.

What can you do?

After considering all of this information, you may be wondering what the average person can do. Involvement in land use and planning decisions at the local level of boro, township, or county can have tremendous effects on the proper use and protection of wetlands and bog turtle habitat. Many communities have embraced their bog turtle

A bog turtle's age can be estimated by counting the annular rings on a plastral (belly) scute.

populations with the realization that protecting the habitat and water quality where bog turtles live leads to direct benefits for the human residents in the watershed. Residents should ensure that development proposals are reviewed with respect to bog turtle issues. Contact a local or regional conservancy or land preservation group to offer support for bog turtle protection efforts. Be vigilant in reporting suspicious activities of persons in southeastern Pennsylvania wetlands who appear to be searching for turtles. Similarly, if bog turtles are seen offered for sale, contact the local or regional law enforcement office of the Commission immediately. If a bog turtle is sighted crossing a road, safely pick it up and carry it off the road in the same direction that it was moving. Moving them back to the side of the road they just came from will only cause them to attempt to cross the road again.

Do not possess or remove bog turtles from the wild. Should you observe one, contact the Fish & Boat Commission Nongame and Endangered Species Unit and report the finding. If it is confirmed, the sighting will increase our knowledge of the turtle's distribution. In recent years, the Commission has documented many new locations through phone calls or letters from alert Pennsylvanians.

The bog turtle is at a threshold in its history. As pressures from development increasingly threaten its habitat, much work will need to be done to keep this species present in Pennsylvania. Public involvement, in the form of participation, cooperation and funding, must support any future protection and enhancement activities pertaining to this small, attractive turtle. However, bog turtles, like many habitat specialists, are often barometers of the quality of wildlife habitats in an ever-changing, increasingly altered environment. Meeting the challenges of protecting, conserving, and enhancing bog turtle populations has not been and probably will not be easy. If we're not careful, this animal could slip away from Pennsylvania's natural heritage as easily as it slips into the soft mud of the wetlands it calls home.

Agency Contacts, Additional Resources

- PA Fish and Boat Commission, Nongame and Endangered Species Unit, 450 Robinson Lane, Bellefonte, PA 16823-9620.
- PA Fish & Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000. Contact the Commission for a list of publications including the Commission's "Turtles of Pennsylvania" wall chart and the books *Pennsylvania Amphibians & Reptiles* and *Endangered and Threatened Species of Pennsylvania*.
- US Fish and Wildlife Service, PA Field Office, 315 South Allen St., Suite 322, State College, PA 16801.
- PA Department of Environmental Protection, Bureau of Dams, Waterways and Wetlands, 6th Floor, Rachel Carson State Office Building, P.O. Box 8554, Harrisburg, PA 17105-8554.
- Wild Resource Conservation Fund, P.O. Box 8764, Harrisburg, PA 17105-8764. Available from the Wild Resource Conservation Fund: "Turtles of Pennsylvania" poster (different from the PA Fish & Boat Commission's poster), "Living on the Edge: Bog Turtles" video, bog turtle patch.

photo-Andy Shiels

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

Exhibit #32

FEB 28 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Revised Interim Clean Water Act Settlement Penalty Policy

FROM: Steven A. Herman
Assistant Administrator

TO: Regional Administrators

Attached is the Agency's new Interim Clean Water Act Settlement Penalty Policy to be used by EPA in calculating the penalty that the Federal government will generally seek in settlement of judicial and administrative enforcement actions brought pursuant to section 309 of the Act. This Policy establishes a framework which EPA expects to use in exercising its enforcement discretion in determining appropriate settlement penalties.

This Policy provides the flexibility necessary to secure appropriate relief in settlement of cases against municipalities, and supersedes six interpretive guidances issued since the Clean Water Act Penalty Policy was issued in February, 1986. This Policy also furthers four important environmental goals. First, penalties should deter noncompliance, and help protect the environment and public health by deterring future violations by the same violator and by other members of the regulated community. Second, penalties should help ensure a level playing field by ensuring that violators do not obtain an economic advantage over their competitors. Third, penalties should be generally consistent across the country in order to provide fair treatment to the regulated community wherever they may operate. Fourth, settlement penalties should be based on a logical calculation methodology to promote swift and fair resolution of enforcement actions and the underlying violations.

This interim revised version of the Policy provides numerous improvements to the 1986 Policy, while still retaining the underlying principles and methodology in the prior Policy. There are four key changes. First, this revision establishes an alternative approach to use in appropriate cases to determine penalties against municipalities. This approach, called the national municipal litigation consideration, is based, in part, on past settlements and on an evaluation of four key factors: the size of the facility (service population), duration of violation, environmental impact, and economic benefit. Our Regional offices have the discretion to select from a range of values for each of these factors and may then reduce the penalty further, if appropriate, by up to 40 percent, for supplemental environmental projects. Second, the methodology for evaluating the gravity or seriousness of the violation has been

revised to eliminate redundancy, improve national consistency, and better cover non-effluent limit violations (such as bypasses). Third, we have established two new gravity adjustment factors to provide incentives for quick settlements and to mitigate penalty amounts for small facilities. Fourth, we have consolidated the existing Policy and six subsequent guidances interpreting it into one document.

This Policy is effective March 1, 1995, and supersedes the Clean Water Act Civil Penalty Policy issued on February 11, 1986. This Policy applies to all CWA civil judicial and administrative actions filed after March 1, 1995 and to all pending cases in which the government has not yet transmitted to the defendant or respondent an oral or written proposed settlement penalty amount. This Policy also may be applied (instead of the 1986 version) in pending cases in which penalty negotiations have commenced if application of this Policy would not be disruptive to the negotiations.

We are issuing this Policy in an interim version because we expect to revise it based on public comments and our experience in using it. We are issuing it as an interim policy, rather than as a draft, because we believe this revision is superior in many ways to the existing 1986 version of the Policy. This interim approach also will put this Policy revision on a consistent timeline with our generic penalty policy analysis. Based on the results of the generic penalty policy analysis, we can then modify the interim version accordingly. We are specifically interested in how well the national municipal litigation consideration and gravity adjustment factors function, and whether we should include an explicit penalty adjustment factor for environmental auditing or voluntary self-disclosures of violations.[1] We expect to publish this interim version of the Policy in the Federal Register within the next 30 days.

Thank you for your comments on the three prior internal drafts of this Policy. If you have any questions or comments on this Policy you may contact David Hindin, Acting Branch Chief, Multimedia Enforcement Branch, at 202 564-6004, or Ken Keith in the Water Enforcement Division at 202 564-4031.

Attachment

MAR 8 1995

cc: (w/attachment)
Regional Counsels
Regional Water Division Directors
Regional Water Enforcement Branch Chiefs
ORC Water Branch Chiefs
Department of Justice, EES Chief and Deputy Chiefs

[1] The 1986 Policy and this interim revision both automatically produce smaller penalty amounts for violators who conduct environmental audits and promptly remedy violations. This is because violators who promptly remedy violations will have shorter histories of violations, which reduces both the economic benefit and gravity penalty amounts.

INTERIM CLEAN WATER ACT SETTLEMENT PENALTY POLICY

March 1, 1995

TABLE OF CONTENTS

I. INTRODUCTION

Section 309 of the Clean Water Act (CWA), (33 U.S.C. §1319) authorizes the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Agency") to bring civil judicial and administrative actions against those who violate certain enumerated requirements of the CWA. In such actions the Administrator may seek civil penalties.

EPA brings enforcement actions to require alleged violators to promptly correct the violations and remedy any harm caused by the violations. As part of an enforcement action, EPA also seeks substantial monetary penalties which promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over competitors who have done whatever was necessary to comply on time. Penalties also encourage companies to adopt pollution prevention and recycling techniques, so that they minimize their pollutant discharges and reduce their potential liabilities.

This Policy implements the Agency's February 1984 general *Policy on Civil Penalties* (#GM-21) and the companion document, *A Framework for Statute Specific Approaches to Penalty Assessments* (#GM-22), both issued on February 16, 1984. This Policy revises and hereby supersedes the *Clean Water Act Penalty Policy for Civil Settlement Negotiations* issued on February 11, 1986.[1]

This document sets forth the policy of the EPA for establishing appropriate penalties in settlement of civil judicial and administrative actions. Subject to the circumstances of a particular case, this policy provides the lowest penalty figure which the Federal Government should accept in a settlement. This Policy is drafted so that violators whose actions, or inactions, resulted in a significant economic benefit and/or harmed or threatened public health or the environment will pay the highest penalties. Obviously, where settlement is not possible, the Government reserves the right to seek penalties up to the statutory maximum.

II. PURPOSE

The purpose of this Policy is to further four important environmental goals. First, penalties should be large enough to deter noncompliance. Second, penalties should help

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[1] The guidances issued to interpret and supplement the 1986 Penalty Policy are also superseded. These documents are the: Addendum to the Clean Water Act Civil Penalty Policy for Administrative Penalties, issued August 28, 1987; Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program, issued December 22, 1988; Bottomline Penalties for Cases Involving More than Five Years of Non-Compliance, issued May 11, 1992; Gravity Penalty Pilot Policy for Clean Water Act Cases, issued November 12, 1992; and Final Interim Guidance on Use of Litigation Consideration Reductions in the Clean Water Act Penalty Policy, issued October 10, 1993 (which incorporated the November 1992 Gravity Penalty Pilot Policy).

ensure a level playing field by ensuring that violators do not obtain an economic advantage over their competitors. These two goals generally require that penalties recover the economic benefit of noncompliance, plus an appropriate gravity amount. Third, CWA penalties should be generally consistent across the country. This is desirable as it not only prevents the creation of "pollution havens" in different parts of the nation, but also provides fair and equitable treatment to the regulated community wherever they may operate. Fourth, settlement penalties should be based on a logical calculation methodology to promote swift resolution of enforcement actions and the underlying violations..

III. APPLICABILITY

This Policy applies to all CWA civil judicial and administrative actions filed after the effective date of this Policy, and to all such pending cases in which the government has not yet transmitted to the defendant or respondent an oral or written proposed settlement penalty amount. This Policy also may be applied (instead of the 1986 version) in pending cases in which penalty negotiations have commenced if application of this Policy would not be disruptive to the negotiations. This Policy applies to civil judicial and administrative penalties sought under CWA §309, including: violations of NPDES permit limits and conditions; discharges without an NPDES permit; violations of pretreatment standards and requirements (including local limits and pretreatment programs); violations of §405 sludge use or disposal requirements; violations of §308 information requests; and violations of §309(a) compliance orders. This Policy does not apply to actions brought exclusively under CWA §311 (oil and hazardous substance spills) nor for violations of requirements in §404 ("wetlands" cases involving disposal of dredged or fill material). Separate penalty policies apply to these two types of cases.

This Policy sets forth how the Agency generally expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate settlement penalty. In some cases, the calculation methodology set forth here may not be appropriate, in whole or part; in such cases, with the advance approval of the Assistant Administrator, an alternative or modified approach may be used.

This Policy only establishes how the Agency expects to calculate the minimum penalty for which it would be willing to settle a case. The development of the penalty amount to plead in an administrative or judicial complaint is developed independent of this Policy, except that the Agency may not seek a settlement penalty in excess of the statutory maximum penalty for the violations alleged in the complaint. This Policy is not intended for use by EPA, violators, courts, or administrative judges in determining penalties at a hearing or trial. (Also see §VI below).

A settlement penalty calculation is generally required before the Agency files an administrative complaint or refers a civil action to the Department of Justice. The penalty

calculation should be revised as relevant new information is discovered during the course of the litigation. The penalty calculation should be reviewed periodically (e.g.,on the anniversary of when the complaint was filed) to determine if any revisions to the calculation are necessary.

IV. PENALTY CALCULATION METHODOLOGY

Before proceeding to calculate the settlement penalty, Agency staff should estimate the statutory maximum penalty in order to determine the potential maximum penalty liability of the discharger.[2] The penalty which the government seeks in settlement may not exceed this statutory maximum amount. Examples of how to calculate the statutory maximum are set forth in Attachment 1. In general, the statutory maximum penalty for violations of an effluent limit for a period longer than one day includes a separate penalty for each day in the time period (assuming there was a discharge on each day).

The settlement penalty is calculated based on this formula:

Penalty = Economic Benefit + Gravity +/- Gravity Adjustment Factors - Litigation Considerations - Ability to Pay - Supplemental Environmental Projects.

Each component of the penalty calculation is discussed below. A worksheet summarizing the penalty calculation is included as Attachment 2.

A. Economic Benefit

Consistent with EPA's February 1984 *Policy on Civil Penalties*, every effort should be made to calculate and recover the economic benefit of noncompliance. The objective of the economic benefit calculation is to place violators in the same financial position as they would have been if they had complied on time. Persons that violate the CWA are likely to have obtained an economic benefit as a result of delayed or completely avoided pollution control expenditures during the period of noncompliance. Commonly delayed and avoided CWA pollution control expenditures, include, but are not limited to:

- Monitoring and Reporting (including costs of the sampling and proper laboratory analysis);
- Capital equipment improvements or repairs, including engineering design, purchase, installation, and replacement;

[2] This calculation of the statutory maximum penalty, done as part of the settlement penalty calculation, is a legal evaluation, subject to the attorney-work product privilege. This calculation is not intended for use in court.

- o Operation and maintenance expenses (e.g. labor, power, chemicals) and other annual expenses; and

- o One-time acquisitions (such as land purchase).

The standard method in settlement efforts for calculating the economic benefit from delayed and avoided pollution control expenditures is through the use of the Agency's BEN model. Refer to the "BEN User's Manual" (Office of Enforcement, December 1993, or any subsequent revision) for specific information on the operation and proper use of BEN. There is no minimum amount triggering the use of the BEN model. In estimating economic benefit using the BEN model, the benefit should be calculated from the first date of noncompliance, but EPA generally does not go back no more than five years prior to the date when the complaint should be filed.[3]

The BEN model will produce a valid estimate of the economic benefit from delayed and avoided compliance costs only if it is properly used.[4] Before using the BEN model you need a defensible theory of on-time compliance: that is, the pollution control system or measures the violator should have installed and operated earlier to have prevented the CWA violations at issue in the case.[5] As a general rule, the best evidence of what the violator should have done to prevent the violations, is what it eventually does (or will do) to achieve compliance.[6]

In some cases, the BEN model may not be an appropriate methodology for estimating economic benefit or will not capture the full scope of the economic benefit. For example, if the violator is a privately-owned regulated utility, the standard BEN model may not be appropriate. In this situation, the Agency should consider a wrongful profits analysis and seek to recover the profits and other competitive market benefits the violator obtained as a result of operating during the period of violation.[7] In another type of case, if the violator

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[3] The five year guideline for when the BEN and gravity calculations starts is a policy decision. Legally, there is nothing that prevents EPA from calculating economic benefit or gravity from the first date of violation, even if that is more than five years before the complaint is filed, as long as the statutory maximum penalty (calculated pursuant to the five year statute of limitations) exceeds the settlement penalty amount.

[4] The BEN model does not calculate the "competitive advantage" benefits a firm may have obtained as a result of operating in violation of the law. Such benefits include profits and increases in market share from selling goods and services during the period of violation.

[5] The BEN model is comparing the compliance costs the violator would have paid if it had complied on-time, versus the usually smaller compliance costs it actually pays by complying late.

[6] See BEN User's Manual, December 1993; page 6-2.

[7] Regions should consult Headquarters for how to conduct this analysis; a financial consultant is likely to be needed.

decides that its "method of compliance" is to cease operations at the facility, conducting a BEN analysis may be complicated.[8] In a few unusual cases, economic benefit may be negative: this means, e.g., operating the old inefficient treatment system was more expensive than purchasing and operating a new, more efficient treatment system. When economic benefit is negative, the settlement calculation enters zero as the economic benefit.

B. Gravity Component

The gravity calculation methodology is based upon a logical scheme and criteria that quantifies the gravity of the violation based upon the CWA and its regulatory programs. Every reasonable effort must be made to calculate and recover a gravity component in addition to the economic benefit component. As EPA's February 1984 *Policy on Civil Penalties*, states on page 4:

> The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if [he] had obeyed the law.

The gravity component of the penalty is calculated for each month in which there was a violation. The total gravity component for the penalty calculation equals the sum of each monthly gravity component. The monthly gravity formula is:

Monthly gravity component = (1 + A + B + C + D) x $1,000.

The four gravity factors -- A, B, C, and D -- are considered for each month in which there were one or more violations. Values are assigned to each of the four factors as described in the text and tables below. In performing the gravity calculation, the monthly gravity component is calculated from the first date of noncompliance up to when the violations ceased or the date the complaint is expected to be filed, but EPA has the option to start the gravity calculation no more than five years prior to the date when the complaint should be filed. (See footnote #4.) In cases with continuing violations, the gravity calculation should be revised periodically to include additional months of violations that have occurred since the previous calculation.

[8] In cases where a facility determines that it can only comply by ceasing operations, an appropriate BEN analysis would be to input the savings obtained from the delayed closure costs and the avoided costs of not treating the wastewater during the period of noncompliance. See Appendix B in BEN User's Manual. If it is not possible to estimate these avoided treatment costs, then a wrongful profit analysis is necessary.

"A" -- Significance of Violation (Monthly Range 0 to 20). This factor is based on the degree of exceedance of the most significant effluent limit violation in each month. Values for this factor are selected from within designated ranges; violations of toxic monthly effluent limits are weighted most heavily. Values are selected using the table below based on the effluent value which yields the highest factor A value. Regions select a particular value for factor A within the designated range. For purposes of this table conventional and nonconventional pollutants include biochemical oxygen demand, chemical oxygen demand, total oxygen demand, dissolved oxygen, total organic carbon, total suspended solids, total dissolved solids, inorganic phosphorous compounds, inorganic nitrogen compounds, oil and grease, calcium, chloride, fluoride, magnesium, sodium, potassium, sulfur, sulfate, total alkalinity, total hardness, aluminum, cobalt, iron, vanadium and temperature. Factor A values for fecal coliform and pH, which are calculated using logarithmic scales, are calculated using the special scales at the bottom of the table. All other pollutants are classified as toxic pollutants.

If there were no effluent limit violations in a particular month, but there were other violations, then factor A is assigned a value of zero in that month's gravity calculation. In pretreatment cases in which the industrial user was not required to provide monthly compliance reports, and provided less frequent effluent data (e.g., in a 40 CFR §403.12(e) periodic compliance report), any effluent violations reported in the report are assumed to represent identical violations in each month of the reporting period for purposes of calculating gravity if there is substantial evidence supporting this assumption. Examples of such evidence are: (1) no pretreatment equipment was in operation during the period and (2) the production and treatment operations remained consistent during the period. This means the monthly gravity calculation, with a factor A value, should be repeated for all of the months covered by the report.[9] If there was no evidence indicating continuing violations throughout the period covered by the periodic compliance report, then a value for Factor A should be assigned only for the month in which the sampling occurred. If the industrial user did not notify the control authority and repeat the sampling after finding the effluent violation as required by 40 CFR §403.12(g)(2), then an appropriate value for gravity Factor D should be assigned for this notification or monitoring violation(s).

[9] The pretreatment regulations, 40 CFR §403.12(g)(3), require the periodic compliance reports to contain data which "is representative of conditions occurring during the reporting period." For example, if an industrial user reports in its December (semi-annual) periodic compliance report that it violated the daily maximum cadmium limit by 150% in September, and this was the most significant effluent violation, using the Gravity Factor A Table, factor A will be assigned a value between 3 and 7 for each of the six months covered by the report (July - December) if, e.g., EPA had evidence that the facility lacked treatment equipment during that period and wastewater generating operations were consistent during the period.

GRAVITY FACTOR A -- SIGNIFICANCE OF THE VIOLATION

Select a value for factor A based on the effluent limit violated in the month which produces the highest range of values for factor A.

Percent by which effluent limit was exceeded:			Factor A Value Ranges	
Monthly Average	7-day Average	Daily Maximum	Toxic Pollutants	Conventional & Nonconventional Pollutants
1 - 20	1 - 30	1 - 50	1 - 3	0 - 2
21 - 40	31 - 60	51 - 100	1 - 4	1 - 3
41 - 100	61 - 150	101 - 200	3 - 7	2 - 5
101 - 300	151 - 450	201 - 600	5 - 15	3 - 6
301 - >	451 - >	601 - >	10 - 20	5 - 15

Percent Exceedance of Fecal Coliform Limit:	Standard Units above or below pH limit:	Factor A Value Ranges:
0 - 100	0 - .50	0 - 5
101 - 500	.51 - 2.0	2 - 8
501 - 5,000	2.01 - 3.0	4 - 10
5,001 - >	3.01 - 4.0	6 - 12
	4.01 - >	8 - 15

"B" -- Health and Environmental Harm (Monthly Range 0 to 50). A value for this factor is selected for each month in which one or more violations present actual or potential harm to human health or to the environment. Values are selected using the table below based on the type of actual or potential harm that yields the highest factor value.

GRAVITY FACTOR B -- HEALTH AND ENVIRONMENTAL HARM	
Type of Actual or Potential Harm	Factor B Value Ranges
Impact on Human Health (e.g., interference with drinking water supplies, harm or increased risks to subsistence fishing)	10 - 50
Impact on Aquatic Environment (or the POTW)	
Water quality-based effluent standard(s) or whole effluent toxicity limit violated	1 - 10
Fish kill, beach closing, restrictions on use of water body; or pass through or interference at the POTW caused by the IU discharge.	4 - 50
Other impact on aquatic environment	2 - 25

"C" -- Number of Effluent Limit Violations (Monthly Range 0 to 5). This factor is based on the total number of effluent limit violations each month. (Violations of interim limitations in administrative orders are not counted here, but included as part of recalcitrance.) In order to properly quantify the gravity of the violations, all effluent limit violations are considered and evaluated. Violations of different parameters at the same outfall are counted separately and violations of the same parameter at different outfalls are counted separately. The guidelines in Attachment 1 for calculating the statutory maximum penalty are generally not applicable for selecting the value for gravity factor C (e.g., violation of a weekly limit need not be calculated as 7 separate violations). A minimum factor C value of 1 is generally appropriate whenever there are violations of two or more different pollutants. Values for this factor may be selected by comparing the number of effluent limits exceeded with the number of effluent limits in the permit: e.g., if all of the limits in the permit were violated in a month, a value of 5 would be appropriate; if 50 percent of the limits in the permit were violated, a factor of 2 or 3 would be appropriate.

"D" -- Significance of Non-effluent Limit Violations. This factor has a value ranging from 0 (zero) to 70 and is based on the severity and number of the six different types of non-effluent limitation requirements violated each month. There are six types of non-effluent violations: 1) monitoring and reporting; 2) pretreatment program implementation; 3) sludge handling; 4) unauthorized discharges; 5) permit milestone schedules; and 7) other types of non-effluent violations. The value for factor D for each month in which there is a non-effluent limit violation is selected pursuant to the table on the next page. The factor D value for a given month is the sum of the highest value for each type of non-effluent limit violation.

With regards to monitoring and reporting violations, the failure to submit a report in a timely manner should generally not be treated as a continuing violation past the month in

which the report is due. For example, if an industrial user fails to submit a baseline monitoring report as required by 40 CFR 403.12(b), this should be counted as a violation only in the month when the report was due. Given the importance of such a report, if the violator fails to submit the report at all a factor D value of 5 or more may be appropriate for this violation.[10]

With regards to pretreatment program implementation violations, "key program activities" include: identifying all industrial users; issuing appropriate control mechanisms to all significant industrial users (SIUs); inspecting SIUs; enforcing industrial user self-monitoring; enforcing pretreatment standards (including local limits); submitting pretreatment reports to the approval authority; and failing to comply with other significant pretreatment program obligations. The 1989 *Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Requirements* or subsequent revisions may be helpful in evaluating the seriousness of pretreatment program implementation violations.

As an example of calculating factor D for a given month, assume a discharger did not sample for 4 of the 8 parameters in its permit, the discharge monitoring report was submitted 20 days late, and there were several days of discharge of a process wastestream through an unauthorized outfall without any treatment. Using the factor D table, for Type 1, a value of 4 may be selected based on the failure to conduct sampling for half of the parameters; the delay in submitting sampling data is not considered since the other Type 1 violation produces a higher value. For the unauthorized discharge of the process wastestream, a value of 6 may be selected for Type 4. Since there are no Type 2, 3, 5, and 6 violations, a value of 0 is entered for each of these Types. Thus, the total value for factor D for this month is 10.

[10] The failure to provide the regulatory agency with required sampling data on the discharge is a very serious violation as this eliminates the government's ability to perform necessary oversight and allows the discharger to avoid the possible application of gravity factor A.

GRAVITY FACTOR D -- NON-EFFLUENT LIMIT VIOLATIONS	
THE FACTOR D VALUE FOR A GIVEN MONTH IS THE SUM OF THE HIGHEST VALUE FOR EACH TYPE OF NON-EFFLUENT LIMIT VIOLATION.	
Type and Extent of Violation	**Factor D Value Ranges**
1. Effluent Monitoring and Reporting Violations:	
Failure to conduct or submit adequate pollutant sampling data for 1 or more pollutant parameters (but not all parameters)	1 to 6
Failure to conduct or submit any required pollutant sampling data in a given month but with a reasonable belief that the facility was in compliance with applicable limits.	2 to 6
Failure to conduct or submit any required pollutant sampling data in a given month without a reasonable basis to believe that facility was otherwise in compliance with applicable limits.	6 to 10
Failure to conduct or submit whole effluent toxicity sampling data	4 to 10
Delay in submitting sampling data	0 to 5
Failure to submit a pretreatment baseline report, 90-day compliance report, or periodic compliance report (40 CFR 403.12(b), (d), or (e,) or failure to sample again after finding a violation (40 CFR 403.12(g)(2)).	2 to 8
Any other monitoring or reporting violation	0 to 10
2. Pretreatment Program Implementation Violations:	
All key program activities implemented, with some minor violations.	0 to 4
One or two key program activities not implemented	2 to 6
Many key program activities not implemented	4 to 8
Few if any program activities implemented	6 to 10
3. Failure to properly control, treat, or dispose of sludge	1 to 10
4. Unauthorized discharge: e.g., discharge through an unpermitted outfall, discharge of a wastestream not identified in the permit, sewer overflows, or spill (other than oil or §311 hazardous substance)	1 to 20
5. Violation of permit milestone schedule	1 to 10
6. Any other type of noneffluent limit violation	1 to 10

C. Gravity Adjustment Factors

In certain circumstances as explained below, the total monthly gravity amount may be adjusted by three factors: flow reduction factor (to reduce gravity); history of recalcitrance (to increase gravity); and the quick settlement reduction factor (to reduce gravity). The resulting figure -- benefit + (gravity +/- gravity adjustments) -- is the preliminary penalty amount.

Flow Reduction Factor for Small Facilities. The total monthly gravity amount may be reduced based on the flow of the facility. This factor is applicable to direct and indirect discharges, both municipal and non-municipals. Flow reduction percentages are selected using the table below. In order to ensure that these reductions are directed at small facilities (that are not otherwise part of large corporation), this gravity reduction does not apply to non-municipals if the facility or parent corporation employs more than 100 individuals.

FLOW REDUCTION FACTOR	
AVERAGE DAILY WASTEWATER DISCHARGE FLOW (in gallons per day)	PERCENTAGE REDUCTION FACTOR OF TOTAL GRAVITY
Less than 5,000	50
Between 5,000 and 9,999	40
Between 10,000 and 19,999	30
Between 20,000 and 29,999	20
Between 30,000 and 49,999	10
Between 50,000 and 99,999	5
100,000 and above	0 (i.e., no reduction)

History of Recalcitrance Adjustment Factor. The "recalcitrance" factor is used to increase the penalty based on a violator's bad faith, or unjustified delay in preventing, mitigating, or remedying the violation. Recalcitrance is also present if a violator failed to comply with an EPA issued administrative compliance order or a §308 information request, or with a prior state or local enforcement order. This factor is applied by multiplying the total gravity component by a percentage between 0 and 150. In administrative penalty actions, violations of administrative compliance orders are not included in the recalcitrance calculation (because EPA lacks the authority to seek penalties in the administrative forum for violations of administrative compliance orders).

A minimum recalcitrance factor of 10 percent is generally appropriate for each instance in which a violator fails to substantially comply in a timely manner with an administrative compliance order ("AO"), a §308 information request, or a state enforcement order. Thus, if a particular discharger violated 3 AOs, a minimum recalcitrance factor of 30 percent is generally appropriate. If a violator completely fails to comply with an AO or §308 request, a recalcitrance factor of 20 percent may be appropriate for that failure, while if there were only minor violations of the AO or request, a recalcitrance factor of 5 percent may be appropriate for that violation.

Quick Settlement Adjustment Factor. In order to provide an extra incentive for violators to negotiate quickly and reasonably, and in recognition of a violator's cooperativeness, EPA may reduce the gravity amount by 10 percent if EPA expects the violator to settle quickly. For purposes of this reduction factor, in Class I administrative enforcement actions, a quick settlement is when the violator signs an administrative consent order resolving the violations within four months of the date the complaint was issued or within four months of when the government first sent the violator a written offer to settle the case, whichever date is earlier. In Class II administrative enforcement actions and judicial cases, the controlling time period is 6 and 12 months, respectively. If the violator is not able to sign the consent order within this time period, this adjustment does not apply.

Environmental Auditing Adjustment Factor. This interim revision of the Penalty Policy contains no explicit gravity adjustment factor for violators that conduct, or fail to conduct, environmental audits, disclose the results to the government, promptly correct the violations and remedy any harm. This interim revision of the Policy (and the original 1986 version), however, automatically produces smaller penalty amounts for violators who promptly remedy violations. This is because violators who promptly remedy violations will have shorter histories of violations and this automatically reduces both the economic benefit and gravity amounts. After the Agency completes its review of its environmental auditing policy, this Policy may be reissued with an explicit adjustment factor for this factor. In the interim, Regions, may with the advance approval of Headquarters, appropriately adjust the gravity amount based on the presence, or absence, of an environmental auditing program.

D. Litigation Considerations (to decrease preliminary penalty amount)

1. Overview. The government should evaluate every penalty with a view toward litigation and attempt to ascertain the maximum civil penalty the court or administrative judge is likely to award if the case proceeds to trial or hearing. Many enforcement cases may have mitigating factors, weaknesses or equitable problems that could be expected to persuade a court to assess a penalty less than the statutory maximum amount. The simple existence of weaknesses in a case, however, should not automatically result in a litigation consideration reduction of the preliminary bottom-line settlement penalty amount (economic benefit + gravity $\pm$ gravity adjustment factors). The government may reduce the amount of the civil penalty it will accept at settlement to reflect weaknesses in its case where the

facts demonstrate a substantial likelihood that the government will not achieve a higher penalty at trial.

2. Legal Evaluation. The mere existence of weaknesses or limitations in a case should not result in a reduction of the preliminary bottom-line settlement penalty amount, unless the Agency determines that the preliminary settlement amount is more than EPA is likely to obtain at trial.[11] In evaluating potential litigation consideration reductions, EPA legal staff should: (a) Determine the statutory maximum penalty; (b) Evaluate what penalty the court might assess at trial given the particular strengths and weaknesses of the case; and, (c) Compare this amount to the preliminary settlement amount (benefit + gravity + recalcitrance).

While Agency legal staff cannot predict the exact penalty amount a court might assess at trial, case law indicates that a court should use the statutory maximum as its preliminary penalty figure, and then reduce that amount, as appropriate, using only the penalty assessment factors in §309(d) of the Act. Fitting the facts of EPA's enforcement case to the method adopted by the courts in recent CWA penalty decisions provides the Agency with the clearest method to estimate penalty litigation outcomes.[12]

3. Application. Adjustments for litigation considerations are taken on a factual basis specific to the case. Before a complaint is filed, the application of certain litigation considerations is almost always premature, since the Agency generally does not have enough information to fully evaluate litigation risk regarding the assigned judge's previous ruling on similar matters, the court's informed opinion, or witness performance. Other litigation considerations, including evidentiary matters, witness availability, and equitable defenses often may not be reliably demonstrated until after case filing. Reductions for these litigation considerations are more likely to be appropriate after the Agency obtains an informed view, through discovery and settlement activities, of the strengths and weaknesses in its case and how the specific court views penalties in the case. Pre-filing settlement negotiations are often helpful in identifying and evaluating litigation considerations, especially regarding potential equitable defenses, and thus reductions based on such litigation considerations may be appropriately taken before the complaint is filed. As a general rule, the greater the

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[11] In many situations, weaknesses or limitations in a case are already accounted for in the preliminary penalty calculation. For example, the gravity calculation will be less in those circumstances in which the period of violation was brief, the exceedances of the limitations were small, the pollutants were not toxic, or there is no evidence of environmental harm. The economic benefit calculation also will be smaller when the violator has already returned to compliance since the period of violation will be shorter.

[12] The prevailing CWA case law on the assessment of penalties indicates that, in assessing a penalty, a court begins at the statutory maximum amount and reduces the penalty based on the specific factors set out in section 309(d) of the CWA. See Atlantic States Legal Foundation v. Tyson Foods, 897 F.2d 1128 (11th Cir. 1990). In contrast, settlement penalties calculated pursuant to this Policy build the Agency's bottom line negotiating position upward from zero, generally ending up with a figure orders of magnitude less than the statutory maximum penalty.

disparity between the maximum statutory penalty and the preliminary penalty amount, the less litigation considerations should affect the Agency's settlement position.

4. Possible Litigation Considerations. While there is no universal list of litigation considerations, the following factors may be appropriate in evaluating whether the preliminary settlement penalty exceeds the penalty the Agency would likely obtain at trial:

a. Known problems with the reliability or admissibility of the government's evidence proving liability or supporting a civil penalty;

b. The credibility, reliability, and availability of witnesses;[13]

c. The informed, expressed opinion of the judge assigned to the case (or person appointed by the judge to mediate the dispute), after evaluating the merits of the case.[14]

d. The record of the judge in any other environmental enforcement case presenting similar issues. (In contrast, the reputation of the judge, or the judge's general demeanor, without a specific penalty or legal statement on a similar case, is rarely sufficient as a litigation consideration.)

e. Statements made by federal, State or local regulators that may allow the respondent or defendant to credibly argue that it believed it was complying with the federal law under which EPA is seeking penalties.

f. The payment by the defendant of civil penalties for the same violations in a case brought by another plaintiff.[15]

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[13] The credibility and reliability of witnesses relates to their demeanor, reputation, truthfulness, and impeachability. For instance, if a government witness has made statements significantly contradictory to the position he is to support at trial, his credibility may be impeached by the respondent or defendant. The availability of a witness will affect the settlement bottom-line if the witness cannot be produced at trial; it does not relate to the inconvenience or expense of producing the witness at trial.

[14] This factor, except as provided below with respect to the record of the judge or other trier of fact, may not be applied in anticipation, or at the stage of initial referral, and should not be distorted by taking at face value what a judge attempting to encourage a settlement might say.

[15] If the defendant has previously paid civil penalties for the same violations to another plaintiff, this factor may be used to reduce the amount of the settlement penalty by no more than the amount previously paid for the same violations. (If the previous plaintiff was a State qualified to preempt federal enforcement under EPA's interpretation of Section 309(g)(6), EPA's complaint should not include counts already addressed by a penalty. See "Supplemental Guidance on Section 309(g)(6) (A) of the Clean Water Act," memorandum from Frederick F. Stiehl, Enforcement Counsel for Water, to Regional Counsels, March 5, 1993, and "Guidance on State Action Preempting Civil Penalty Enforcement Actions Under the Federal Clean Water Act, OE/OW, August 28, 1987.)

g. The development of new, relevant case law.

h. A blend of troublesome facts and weak legal arguments such that the Agency faces a significant risk of obtaining a nationally significant negative precedent at trial.

5. Not Litigation Considerations. In contrast to the above list of possible litigation considerations, the following items are not litigation considerations:

a. A generalized goal to avoid litigation or to avoid potential precedential areas of the law.[16]

b. A duplicative use of elements included or assumed elsewhere in the Penalty Policy, such as inability to pay, "good faith"[17], "lack of recalcitrance", or a lack of demonstrated environmental harm[18].

c. Off-the-record statements by the court, before it has had a chance to evaluate the specific merits of the case are, by themselves, not a reason to reduce the preliminary settlement penalty amount. (Compare with 4.c above.)

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[16] A generalized desire to minimize litigation costs is not a litigation consideration.

[17] The efforts of the violator to achieve compliance or minimize the violations after EPA, a State or pretreatment control authority has initiated an enforcement action (i.e., an administrative or judicial enforcement action) do not constitute "good faith" efforts. If such efforts are undertaken before the regulatory agency initiates an enforcement response, the settlement penalty calculation already includes such efforts through a potentially smaller economic benefit amount, a shorter or less serious gravity component, or a lack of any recalcitrance. The Penalty Policy assumes all members of the regulated community will make good faith efforts both to achieve compliance and remedy violations when they occur; consequently the settlement penalty calculation begins at zero and builds upward, with no reductions for good faith. In contrast, the absence of good faith efforts provides the basis for increasing the penalty through use of the recalcitrance factor.

[18] The gravity calculation will reflect the lack of environmental harm. Courts have considered the extent of environmental harm associated with violations in determining the "seriousness of violations" pursuant to the factors in §309(d), and have used the absence of any demonstrated or discrete identified environmental harm to impose less than the statutory maximum penalty. Proof of environmental harm, however, is neither necessary for liability nor for the assessment of penalties.

d. The fact that the receiving water is already polluted or that the water can assimilate additional pollution is not a litigation consideration.[19]

e. By itself, the failure of a regulatory agency to initiate a timely enforcement action is not a litigation consideration.[20]

6. Approval of Litigation Considerations. The Agency recognizes that the quantitative evaluation of litigation considerations often reflects subjective legal opinions. Therefore, EPA Regions may reduce the preliminary penalty amount for litigation considerations for up to one-third of the net gravity amount (i.e., gravity as modified by the gravity adjustment factors) without Headquarters approval (where such approval would otherwise be required). Of course, such a reduction must be fully explained and maintained in the case file. This reduction is not applicable in municipal cases in which the tables in D.7 below are used.

7. Municipal Cases. In those cases against a municipality or other public entity (such as a sewer authority) in which the entity has failed to comply with the Clean Water Act but nevertheless did make good faith efforts to comply, the Agency may mitigate the preliminary penalty amount based on this national municipal litigation consideration. The preliminary penalty amount (economic benefit + gravity $\pm$ gravity adjustments) may be mitigated to no less than the cash penalty determined by operation of the two tables set forth below. In addition, the cash penalty amount established by the tables may be reduced based on compelling ability to pay considerations and by up to 40 percent for appropriate supplemental environmental projects. Reducing the cash penalty below the amount established by the national municipal litigation consideration (other than for ability to pay considerations or for 40 percent based on a SEP) requires compelling evidence of other considerations and the prior approval of Headquarters (even if Headquarters' approval of the settlement would otherwise not be required).

The national municipal litigation consideration is a discretionary factor and the Agency is under no obligation to use it in all municipal cases.[21] It should only be used if there is some evidence that the municipality made a good faith effort to comply. The national municipal litigation consideration is based on the economic benefit, environmental

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[19] See, e.g., Natural Resources Defense Council v. Texaco Refining and Mktg., 800 F. Supp. 1, 24 (D. Del. 1992).

[20] See PIRG v. Powell Duffryn, 913 F. 2d 64, 80-81 (3rd Cir. 1990).

[21] The national municipal litigation consideration is primarily intended to apply in cases in which there has been a failure to timely construct treatment facilities or other capital projects; it may not be appropriate in pretreatment failure to implement cases.

impact, duration and size of the facility, and is derived, in part, on the settlement penalties EPA has obtained from judicial municipal cases settled between October 1988 and December 1993. There are three steps to calculate a penalty using the national municipal litigation consideration tables.

1. Using Table A determine the economic benefit environmental impact factor amount. This dollar amount is found by selecting an appropriate value from the range in the appropriate cell in Table A. The economic benefit is the benefit previously calculated pursuant to section IV.A. above. Impact of the violations is based on the actual or potential (risk) of harm caused, in whole or part, by the violations.

2. Using Table B determine the population months of violations factor amount. This dollar amount is found by selecting an appropriate value from the range in the appropriate cell in Table B. The service population is the total population served by the violating POTW(s) during the period. The months of violation are the total number of months calculated pursuant to section IV.B above. (If the service population exceeds 3 million, the Table B value is found by combining values from multiple rows. For example, if the service population was 4.5 million, the factor B penalty contribution would be the sum of a value selected from the appropriate cell in the 1,000,001 to 2,000,000 population row plus a value selected from the appropriate cell in the 2,000,001 to 3,000,000 population row.)

3. Sum the selected factor values from Tables A and B. Note that the factor values in Tables A and B are in thousands of dollars.

NATIONAL MUNICIPAL LITIGATION CONSIDERATION -- TABLE A

ECONOMIC BENEFIT ENVIRONMENTAL IMPACT FACTOR IN THOUSANDS OF DOLLARS									
IMPACT OF VIOLATIONS ON HUMAN HEALTH OR THE ENVIRONMENT	**ECONOMIC BENEFIT RANGES IN THOUSANDS OF DOLLARS**								
	.001 to 50	50 to 100	100 to 250	250 to 1,000	1,000 to 2,000	2,000 to 5,000	5,000 to 10,000	10,000 to 25,000	greater than 25,000
No actual or potential harm.	6 to 9	11 to 15	17 to 23	32 to 43	49 to 67	75 to 103	110 to 151	167 to 230	283 to 389
Minor actual or potential harm (e.g., water quality-based effluent or whole effluent toxicity limit violated).	9 to 11	16 to 19	25 to 29	47 to 55	73 to 86	112 to 131	164 to 192	251 to 293	424 to 495
Moderate actual or potential harm (e.g., fish kill, beach closing, restrictions on use of water body, raw sewage discharges).	13 to 14	22 to 25	33 to 38	63 to 71	98 to 110	150 to 168	219 to 246	335 to 376	566 to 636
Severe actual or potential harm (e.g., repeated beach closings, interference with drinking water supplies).	17 to 32	30 to 55	46 to 84	87 to 158	135 to 245	206 to 374	301 to 548	460 to 837	778 to 1,414

NATIONAL MUNICIPAL LITIGATION CONSIDERATION -- TABLE B

POPULATION MONTHS OF VIOLATION FACTOR IN THOUSANDS OF DOLLARS

SERVICE POPULATION	MONTHS OF VIOLATION											
	1 to 6	7 to 12	13 to 18	19 to 24	25 to 30	31 to 36	37 to 42	43 to 48	49 to 54	55 to 60	61 to 66	66>
100 to 5,000	0 to 0.6	0 to 1.8	0.1 to 3	0.1 to 4.2	0.1 to 5.4	0.1 to 6.6	0.2 to 7.8	0.2 to 9	0.2 to 10.2	0.2 to 11.4	0.3 to 12.6	0.3 to 14
5,001 to 25,000	0.6 to 3	1.8 to 9	3 to 15	4.2 to 21	5.4 to 27	6.6 to 33	7.8 to 39	9 to 45	10.2 to 51	11.4 to 57	12.6 to 63	14 to 70
25,001 to 50,000	3 to 6	9 to 18	15 to 30	21 to 42	27 to 54	33 to 66	39 to 78	45 to 90	51 to 102	57 to 114	63 to 126	70 to 140
50,001 to 100,000	6 to 12	18 to 36	30 to 60	42 to 84	54 to 108	66 to 132	78 to 156	90 to 180	102 to 204	114 to 228	126 to 252	140 to 280
100,001 to 250,000	12 to 30	36 to 90	60 to 150	84 to 210	108 to 270	132 to 330	156 to 390	180 to 450	204 to 510	228 to 570	252 to 630	280 to 700
250,001 to 500,000	30 to 60	90 to 180	150 to 300	210 to 420	270 to 540	330 to 660	390 to 780	450 to 900	510 to 1,020	570 to 1,140	630 to 1,260	700 to 1,400
500,001 to 1,000,000	60 to 120	180 to 360	300 to 600	420 to 840	540 to 1,080	660 to 1,320	780 to 1,560	900 to 1,800	1,020 to 2,040	1,140 to 2,280	1,260 to 2,520	1,400 to 2,800
1,000,001 to 2,000,000	120 to 240	360 to 720	600 to 1,200	840 to 1,680	1,080 to 2,160	1,320 to 2,640	1,560 to 3,120	1,800 to 3,600	2,040 to 4,080	2,280 to 4,560	2,520 to 5,040	2,800 to 5,600
2,000,001 to 3,000,000	240 to 360	720 to 1,080	1,200 to 1,800	1,680 to 2,520	2,160 to 3,240	2,640 to 3,960	3,120 to 4,680	3,600 to 5,400	4,080 to 6,120	4,560 to 6,840	5,040 to 7,560	5,600 to 8,400

E. Ability to Pay (to decrease preliminary penalty amount)

The Agency typically does not request settlement penalties, which combined with the cost of the necessary injunctive relief, that are clearly beyond the financial capability of the violator. This means EPA should not seek a penalty that would seriously jeopardize the violator's ability to continue operations and achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant, threatening to human health or the environment, or the violator refuses to comply.

The adjustment for ability-to-pay may be used to reduce the settlement penalty to the highest amount that the violator can reasonably pay and still comply with the CWA. The violator has the primary burden of establishing the claim of inability to pay. The violator must submit the necessary information demonstrating actual inability to pay as opposed to unwillingness to pay. Further, the claim of inability to pay a penalty should not be confused with a violator's aversion to make certain adjustment in its operations in order to pay the penalty.[22]

If the violator is unwilling to cooperate in demonstrating its inability to pay the penalty, this adjustment should not be considered in the penalty calculation, because, without the cooperation of the violator, the Agency will generally not have adequate information to determine accurately the financial position of the violator. In some cases, the Agency may need to consult a financial expert to properly evaluate a violator's claim of inability to pay.

If the violator demonstrates an inability to pay the entire negotiated penalty in one lump sum (usually within 30 days of consent decree entry), a payment schedule should be considered. The penalty could be paid in scheduled installments with appropriate interest accruing on the delayed payments. The period allowed for such installment payments should generally not extend beyond three years.

If a payment schedule will not resolve the violator's ability-to-pay issue, as a last recourse, the Agency can reduce the amount it seeks in settlement to a more appropriate amount in situations in which inability-to-pay can be clearly documented and reasonably quantified.

In the case of municipalities, one quick way to evaluate whether there might be an ability to pay issue is to examine the most recent bond rating (within the past 5 years). If the bond rating is below BBB (Standard & Poor's rating scale) or below Baa (Moody's rating scale), the community may be in poor financial condition and a detailed financial evaluation

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[22] For example, a business may have to use funds that were previously designated to develop a new product line to pay a penalty and thus the new product line would be delayed. Similarly, a penalty could be paid using company funds that otherwise would have gone to pay its executives bonuses.

by an appropriate expert may be necessary to determine whether the financial condition affects the ability to pay a penalty.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

Supplemental Environmental Projects (SEPs) are defined by EPA as environmentally beneficial projects which a violator undertakes, but is not otherwise legally required to perform, in exchange for favorable penalty consideration in settlement of an enforcement action. In order for a violator to receive a settlement penalty reduction in exchange for performing such a project, the project must conform with the EPA's SEP Policy, or be approved in advance by the Assistant Administrator[23]. A SEP may be allowed in a municipal case, even if the cash penalty is less than economic benefit, provided the cash penalty is no less than 60 percent of the amount provided in section IV.D.7. Use of SEPs in a particular case is entirely within the discretion of EPA, and the Department of Justice in judicial cases.

VI. OTHER TYPES OF PENALTIES

This Policy only establishes how the Agency expects to calculate the minimum penalty for which it would be willing to settle a case. The development of the penalty amount to plead in an administrative or judicial complaint is developed independent of this Policy. This Policy is not intended and should not be used as the basis for a penalty demand in a complaint, an administrative hearing or, a civil judicial trial. The Agency will not use this Penalty Policy in arguing for a penalty at trial or in an administrative penalty hearing.[24] In those cases which proceed to trial or an administrative hearing, the Agency should seek a penalty higher than that for which it is willing to settle.

If the "bottom-line" settlement penalty calculated pursuant to this Policy exceeds the maximum penalty that can be obtained in an administrative penalty action pursuant to §309(g) of the CWA, the Agency should instead proceed judicially.[25] In rare circumstances, the

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[23] See "EPA Policy on the Use of Supplemental Environmental Projects in Enforcement Settlements", transmitted on February 12, 1991 by the Assistant Administrator for Enforcement, or subsequent revisions.

[24] If that were to occur, then the defendant would have no incentive to settle with EPA. See *Guidance on the Distinctions Among Pleading, Negotiating, and Litigating Civil Penalties for Enforcement Cases Under the Clean Water Act*, OECM/OW, January 19, 1989.

[25] For further guidance on choosing between administrative and judicial enforcement options, see "Guidance on Choosing Among Clean Water Act Administrative, Civil and Criminal Enforcement Actions", which was Attachment 2 to the August 28, 1987 "Guidance Documents and Delegations for Implementation of Administrative Penalty Authorities Contained in 1987 Clean Water Act Amendments".

statutory maximum penalty may be less than the "bottom-line" settlement penalty in civil judicial cases; in such circumstances, the statutory maximum penalty should serve as the new "bottom-line" penalty.

VII. DOCUMENTATION, APPROVALS, AND CONFIDENTIALITY

Each component of the settlement penalty calculation (including all adjustments and subsequent recalculations) must be clearly documented with supporting materials and written explanations in the case file. In all cases in which a settlement penalty may not comply with the provisions of this Policy, or in a case in which application of this Policy appears inappropriate, the penalty must be approved in advance by the EPA Assistant Administrator for Enforcement and Compliance Assurance.

Documentation and explanations of a particular settlement penalty calculation constitute confidential information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual settlement penalty calculations are confidential documents, this Policy is a public document and may be released to anyone upon request. Further, as part of settlement negotiations between the parties, the Agency may choose to release parts of the case-specific settlement calculations. The release of such information may only be used for settlement negotiations in the case at hand and, of course, may not be admitted into evidence in a trial or hearing. See Rule 408 of Federal Rules of Evidence.

This Policy is purely for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, implied or otherwise, in any third parties.

ATTACHMENT 1 TO INTERIM CWA SETTLEMENT PENALTY POLICY

EXAMPLES OF HOW TO CALCULATE STATUTORY MAXIMUM PENALTY

Violation scenario	Maximum statutory penalty*	Authority
Violation of daily maximum limit for pollutant A, on the 5th of January.	$25,000	Plain reading of CWA, § 309(d): "$25,000 per day for each violation"
Violation of daily maximum limit for pollutant A, on the 5th, 10th, and 15th of January.	$75,000	Plain reading of CWA, § 309(d): "$25,000 per day for each violation"
Violation of daily maximum limits for each of pollutants A and B, on the 5th of January.	$50,000	Tyson Foods and Powell Duffryn, as well as plain reading of CWA, § 309(d): "$25,000 per day for each violation"
Violation in January of weekly average for pollutant A.	$25,000 per day, multiplied by 7 days $175,000.	Tyson Foods, 897 F.2d at 1139. Also see, Gwaltney, 897 F. 2d at 314.
Violation in January of monthly average limit for pollutant A.	$25,000 per day, multiplied by 31 days in January = $775,000	Tyson Foods, 897 F.2d at 1139. Also see, Gwaltney, 897 F. 2d at 314.
Violation in January of monthly average limit for pollutant A, in which there is evidence that there were no discharges on 4 days (e.g. plant shut down on Sundays).	$25,000 per day, multiplied by 27 days in January = $675,000	Natural Resources Defense Council v. Texaco, 2 F.3d 493, 507-508 (3rd Cir. 1993).
Violation in January of monthly average limits for both pollutants A and B.	$50,000 per day, multiplied by 31 days in January, = $1,550,000	Tyson Foods, 897 F.2d at 1140, footnote 22
Violation in January of monthly average limit for pollutant A, and of daily maximum limit for pollutant B on January 5th and 15th.	$775,000 for pollutant A, + $50,000 ($25,000 per day x 2) for pollutant B, = $825,000	Tyson Foods, 897 F.2d at 1140, under "The interaction of daily and monthly violations"
Violation in January of monthly average limit for pollutant A, and of daily maximum limit for pollutant A on Jan. 5th and 15th.	25,000 per day, multiplied by 31 days in January, = $775,000.	Tyson Foods, 897 F.2d at 1140, under "The interaction of daily and monthly violations"
Failure to properly monitor** for pollutant A on 4 required days in January.	$100,000.	Statutory language, CWA §309.

Violation scenario	Maximum statutory penalty*	Authority
Failure to properly monitor for pollutants A, B, and C on January 15.	$75,000.	Statutory language, CWA §309.
Failure to monitor for a monthly pollutant parameter.	$25,000 for each day in which the discharger was required to monitor for that pollutant.	Statutory language, CWA §309.
Failure to submit adequate discharge monitoring report on time (each failure to monitor for a particular pollutant is subject to a separate penalty calculation).	$25,000.	Statutory language, CWA §309.
Failure to timely submit a report or other document (each failure to timely complete an activity covered by the report is subject to a separate penalty calculation).	$25,000	Settlement policy discretion.

NOTES:

* For administrative penalty cases the penalty per day for each violation is $10,000 and may not exceed the total penalty amount allowed in a Class I or Class II administrative proceeding.

** For purposes of calculating penalties, the act of monitoring for a particular pollutant includes the sequence of events starting with the collection of the wastewater sample through completion of the analytical testing of the sample. The obligation to report the results of the monitoring is a separate act subject to a separate penalty calculation.

The guidelines set forth here reflect EPA's policy on how to calculate the statutory maximum penalty with regards to ensuring that all settlement penalties sought pursuant to the Penalty Policy do not exceed such statutory maximum. At trial or in a hearing, EPA reserves the right to calculate the statutory maximum pursuant to more aggressive assumptions.

ATTACHMENT 2 TO INTERIM CWA SETTLEMENT PENALTY POLICY

Case Name_____ Date_____

Prepared by _____ and _____ [attorney name].

SETTLEMENT PENALTY CALCULATION WORKSHEET

	STEP	AMOUNT
1.	Calculate Statutory Maximum Penalty (period of violations from _____ through _____)	
2.	Economic Benefit (attach BEN printouts, with explanations for calculations)	
3.	Total of Monthly Gravity Amounts	
4.	Economic Benefit + Gravity (lines 2 + 3)	
5.	Gravity Adjustments	
	a. Flow Reduction Factor ____ (0 to 50%) X line 3	
	b. Recalcitrance Factor ____ (0 to 150%) X line 3	
	c. Quick Settlement Reduction ___ (0 or 10%) X line 3	
	d. Total gravity adjustments (negative amount if net gravity reduction) (lines 5.b. - 5.c - 5.a)	
6.	Preliminary Penalty Amount (lines 4 + 5.d)	
7.	Litigation Consideration Reduction (if any)	
8.	Ability to pay reduction (if any)	
9.	Reduction for Supplemental Environmental Projects (if any)	
10.	**Bottom-line Cash Settlement Penalty** (Line 6 less lines 7, 8 and 9. Or, if applicable, amount calculated by national municipal litigation consideration in §IV.D.6, less no more than 40% of that amount for appropriate SEPs.)	

General Permit No.: DCR01
Effective Date: July 1, 2004
Expiration Date: June 30, 2009

GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant to that, operators of construction activities (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area) with stormwater discharges from these construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations and policies or permit issuing authority policies and ordinances which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I - Discharge Authorization and Special Conditions, Section II - Stormwater Pollution Prevention Plan, and Section III - Conditions Applicable To All VSMP Permits as set forth herein.

SECTION I
DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater from construction activities.

2. This permit also authorizes stormwater discharges from off-site support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that:

a. The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate controls and pollution prevention measures for the discharges from the support activity areas are identified in the stormwater pollution prevention plan required for the construction activity under Section II D of this permit.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

B. Limitation on coverage.

1. Post-construction discharges. This permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges which are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).

3. Discharges covered by another permit. This permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part Section III X.

4. TMDL limitation. Discharges to waters for which a "total maximum daily load" (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation.

C. Commingled discharges. Any discharge authorized by a different VSMP or VPDES permit may be commingled with discharges authorized by this permit.

D. Prohibition of nonstormwater discharges.

1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Waters used to wash vehicles where detergents are not used;

d. Water used to control dust;

e. Potable water sources, including waterline flushings;

f. Water used for hydrostatic testing of new pipeline construction;

g. Routine external building wash down which does not use detergents;

h. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;

i. Uncontaminated air conditioning or compressor condensate;

j. Uncontaminated ground water or spring water;

k. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

l. Uncontaminated excavation dewatering, and

m. Landscape irrigation.

E. Releases of hazardous substances or oil in excess of reportable quantities.
The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) occurs during a 24-hour period:

1. The permittee is required to notify the Department of Environmental Quality and the permit issuing authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;

2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4 and the Department of Conservation and Recreation; and

3. The stormwater pollution prevention plan required under Section II D of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

F. Spills.
This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of permit coverage.

1. The operator of the construction activity may only submit a notice of termination after one or more of the following conditions have been met:

a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;

b. Another operator has assumed control over all areas of the site that have not been finally stabilized;

c. Coverage under an alternative VPDES or VSMP permit has been obtained; or

d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

2. The notice of termination must be submitted within 30 days of one of the conditions in Section I G 1 being met. Authorization to discharge terminates seven days after the notice of termination is submitted.

3. The notice of termination shall be signed in accordance with Section III K of this permit.

H. Water quality protection. The permittee must select, install, implement and maintain best management practices (BMPs) at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. If there is evidence indicating that the stormwater discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, or are causing downstream pollution (as defined in this part), the permit issuing authority may take appropriate enforcement action, may require the

permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit in accordance with 4VAC50-60-410 B 3.

SECTION II
STORMWATER POLLUTION PREVENTION PLAN

A stormwater pollution prevention plan (SWPPP) shall be developed and implemented for the construction activity covered by this permit. SWPPPs shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition, the SWPPP shall describe and ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges from the construction site, and to assure compliance with the terms and conditions of this permit.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state, tribal or local plans such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the construction activity is being incorporated by reference, the referenced plan must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations (4 VAC 50-30) prior to the commencement of construction. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the permittee must develop the missing elements and include them in the required SWPPP.

Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

The operator must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

A. Deadlines for SWPPP preparation and compliance.

1. The SWPPP shall be prepared prior to submittal of the registration statement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

2. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

B. Signature, plan review and making plans available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this permit at the construction site from the date of commencement of construction activity to the date of final stabilization. Permittees with day-to-day operation control over SWPPP implementation shall have a copy of the plan available at a central location on-site for the use of all operators and those identified as having responsibilities under the plan whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department and the permitting issuing authority for review at the time of an on-site inspection.

3. The permittee shall make SWPPPs available upon request to the department; the permit issuing authority; a state or local agency approving erosion and sediment plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

C. Maintaining an updated SWPPP.

1. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by site staff, or by local, state or federal officials, it is determined that the discharges are causing water quality exceedances, or the SWPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site.

3. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Section II D 3 b.

4. The SWPPP must clearly identify for each measure identified in the plan, the contractor(s) or subcontractor(s) that will implement the measure. The SWPPP shall be amended to identify any new contractor that will implement a measure of the plan.

D. Stormwater pollution prevention plan contents.
The SWPPP shall include the following items:

1. Site and activity description. Each SWPPP shall provide the following information:

a. A description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation).

c. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;

d. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.

e. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;

f. The location and description on any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this permit.

g. A site map indicating:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Areas of soil disturbance and areas of the site which will not be disturbed;

(3) Locations of major structural and nonstructural controls identified in the SWPPP, including those that will be permanent controls that will remain after construction activities have been completed;

(4) Locations where stabilization practices are expected to occur;

(5) Surface water bodies (including wetlands);

(6) Locations where stormwater discharges to a surface water;

(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the plan;

(8) Locations of other potential pollution sources , such as vehicle fueling, storage of chemicals, sanitary waste facilities, etc.; and

(9) Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

2. Controls to reduce pollutants. The SWPPP shall include a description of all pollution control measures that will be implemented as part of the construction activity to control pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

(1) Stabilization practices. The SWPPP shall include a description of interim and permanent stabilization practices for the site. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, riprap, gabions, facines, biologs and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

(a) A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be maintained and included in the SWPPP.

(b) Except as provided in Section II D 2 a (1) (c), (d) and (e), stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

(c) Where the initiation of stabilization measures by the seventh day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(d) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of the site.

(e) In drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within seven days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as practicable.

(2) Structural practices. The SWPPP shall include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent

sediment basins. Structural practices should be located on upland soils to the degree attainable. The department and the permit issuing authority encourages the use of a combination of erosion and sediment control measures in order to achieve maximum pollutant removal.

(a) Sediment basins: For common drainage locations that serve an area with three or more acres disturbed at one time, a temporary (or permanent) sediment basin providing 3,618 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,618 cubic feet of storage area per acre drained does not apply to flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design.

(b) For drainage locations which serve three or more acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(c) For drainage locations serving less than three acres, smaller sediment basins or sediment traps or both should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all downslope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions, of the construction area unless a sediment basin providing storage for 3,618 cubic feet of storage per acre drained is provided.

b. Management practices.

(1) All control measures must be properly selected, installed, and maintained in accordance with manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations as soon as practicable.

(2) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

(3) Litter, construction debris, and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

c. Stormwater management.

(1) The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed during the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such measures must be designed and installed in accordance with applicable local and/or state requirements.

(2) Such measures may include, but are not limited to: stormwater detention structures (including dry ponds); stormwater retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on-site; stormwater wetlands; sand filters; bioretention systems; water quality structures; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution and flows that exceed predevelopment levels.

(3) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel. In addition, the natural, physical, chemical, and biological characteristics and functions of the receiving waters must be maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to surface waters of the state, except as authorized by a Clean Water Act § 404 permit.

(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(3) The SWPPP shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(4) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The plan shall also include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and for spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including stormwater discharges from dedicated asphalt plants and

dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs.
The SWPPP shall be consistent with all applicable state or local requirements for erosion and sediment control and stormwater management including updates to the SWPPP as necessary to reflect any revisions to applicable state or local requirements for erosion and sediment control and stormwater management.

3. Maintenance of controls.

a. The SWPPP must include a description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan. If site inspections required by Section II D 4 identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If existing BMPs need to be modified or if additional BMPs are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs shall be implemented as soon as practicable.

4. Inspections. Inspections by qualified personnel must be conducted of all areas of the site disturbed by construction activity, and areas used for storage of materials that are exposed to stormwater. "Qualified personnel" means a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person who (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment.

a. Inspections shall be conducted at least once every 14 calendar days and within 48 hours of the end of any runoff producing storm event. Where areas have been finally or temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspectors must look for evidence of, or the potential for, pollutants entering the stormwater conveyance system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations where accessible shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 e.

d. Based on the results of the inspection, the site and activity description identified in the plan in accordance with Section II D 1 of this permit and pollution prevention measures identified in the SWPPP in accordance with Section II D 2 of this permit shall be revised as appropriate within seven calendar days following the inspection.

e. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the permit shall be made and retained as part of the SWPPP in accordance with Section III B of this permit. Major observations should include:

(1) The location(s) of discharges of sediment or other pollutants from the site;

(2) Location(s) of BMPs that need to be maintained;

(3) Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;

(4) Location(s) where additional BMPs are needed that did not exist at the time of inspection; and

(5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates.

The reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the stormwater pollution prevention plan and this permit. The report shall be signed in accordance with Section III K of this permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstormwater components of the discharge.

SECTION III
CONDITIONS APPLICABLE TO ALL VSMP PERMITS

NOTE: Monitoring is not required for this permit. If you choose to monitor your stormwater discharges or BMPs, you must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of

all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the permit issuing authority.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the permit issuing authority, within a reasonable time, any information which the permit issuing authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permit issuing authority may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Virginia Stormwater Management Act . The permittee shall also furnish to the permit issuing authority, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the permit issuing authority or the Department of Environmental Quality, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Section III F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Section III F, shall notify the department, the Department of Environmental Quality, and the permit issuing authority of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, the Department of Environmental Quality, and the permit issuing authority within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department, the Department of Environmental Quality, and the permit issuing authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department, the Department of Environmental Quality, and the permit issuing authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse

effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department, the Department of Environmental Quality, and the permit issuing authority within five days of discovery of the discharge in accordance with Part Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the facilities; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
The permit issuing authority may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Section III I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required in Section III G, H and I may be made to the department's Urban Program's Section of the Division of Soil and Water Conservation. Reports may be made by telephone or by fax. For reports outside normal

working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24 hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the permit issuing authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in this permit; or

2. The permittee shall give advance notice to the permit issuing authority of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations;

the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Section III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Section III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the permit issuing authority prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Section III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Section III U), and "upset" (Section III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are

installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Section III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the permit issuing authority may take enforcement action against a permittee for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Section III U 2.

b. The permit issuing authority may approve an anticipated bypass, after considering its adverse effects, if the permit issuing authority determines that it will meet the three conditions listed in Section III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Section III I; and

d. The permittee complied with any remedial measures required under Section III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director as the Board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the permit issuing authority. Except as provided in Section III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the permit issuing authority at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The permit issuing authority does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Exhibit #23

Fact Sheet

Commonwealth of Pennsylvania • Department of Environmental Protection

NPDES PERMITS FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

BACKGROUND

In 1990, the US Environmental Protection Agency (EPA) promulgated federal National Pollutant Discharge Elimination System (NPDES) regulations for stormwater discharges under the Clean Water Act. These regulations, among other discharge requirements, established the federal Phase I NPDES stormwater discharge program which requires permit coverage for all operators of large construction activities proposing to disturb five or more acres of land. Effective October 10, 1992, operators of large construction activities required NPDES Permit coverage in Pennsylvania for such activities. In December 1999, EPA promulgated NPDES Phase II regulations that require permit coverage for small construction activities that disturb one to less than five acres which result in a point source discharge to waters of the United States. Effective December 7, 2002, the Pennsylvania Department of Environmental Protection (DEP) integrated the federal Phase II NPDES requirements into the existing Pennsylvania Phase I NPDES Permit for stormwater discharges associated with construction activities (NPDES Construction Permit). An important distinction between Phase I and II is that the small construction activities only require permit coverage when the activity disturbs one to less than five acres and will result in a point source discharge to surface waters of the Commonwealth.

NPDES CONSTRUCTION PROGRAM ADMINISTRATION

The DEP primarily administers the NPDES Construction Permit Program through delegation agreements with the county conservation districts (Districts). Districts process and authorize the permit coverage, conduct site inspections, respond to complaints, and in certain circumstances, conduct enforcement actions. If a district is not delegated, the appropriate DEP Regional Office administers the program.

NPDES CONSTRUCTION PERMIT REQUIREMENTS

Applicable Pennsylvania state regulations found at 25 Pa. Code include Chapter 92, National Pollutant Discharge Elimination System; Chapter 93, Water Quality Standards; and Chapter 102, Erosion and Sediment Control. These chapters provide the primary regulatory authority for implementing the federal NPDES requirements within the Commonwealth. Chapter 92 regulations provide for the development and use of individual and general NPDES permits, applications and Notice of Intent (NOI), and describes the public participation and other requirements. Chapter 93 regulations identify the water quality standards that must be met, including those for special protection waters. Chapter 102 regulations provide the requirements for the development and implementation of Erosion and Sediment Control (E&S) Plans for earth disturbance activities.

For purposes of the Phase II NPDES Construction Permit the following definitions apply:

Point source: *Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAFO, landfill leachate collection system, or vessel or floating craft, from which pollutants are or may be discharged.*

Surface waters of the Commonwealth: *Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, ponds, springs, wetlands and all other bodies or channels of conveyance of surface water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.*

A point source discharge to surface waters of the Commonwealth is a distinct conveyance used to transport stormwater from a construction site to a surface water. Some examples where NPDES Construction Permit coverage will generally be required include, but are not limited to, sediment trap outfalls and spillways, sediment basin outfalls and spillways, conveyance channels, ditches, stormwater systems, pipes, etc., having a discharge to surface waters.

NPDES GENERAL PERMITS – PAG-2

This NPDES general permit can be used for most construction activities that require authorization under either Phase I or Phase II. Some activities that are not eligible for coverage under the general permit include:

1. Activities in special protection watersheds;
2. Activities prohibited from coverage under 25 Pa. Code Chapter 92; and
3. Activities otherwise listed in the PAG-2 General Permit as ineligible.

The NOI for a NPDES general permit should be submitted to the district at least 30 days prior to the anticipated start date of a project to ensure adequate time for reviewing and processing. Processing time for general permits are largely dependant upon the complexity and thoroughness of the application and erosion and sediment control plan. For large or complex projects, it is recommended that the application be submitted several months before the anticipated starting date.

NPDES INDIVIDUAL PERMITS

Operators of earth disturbance activities that do not qualify for a general permit may apply for an Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities. An individual permit application and accompanying documents must be submitted to the appropriate district or DEP Regional Office, reviewed and approved before earth disturbance activities begin. The DEP Regional Office will make the final determination to issue or deny the permit. To ensure adequate processing time and compliance with the required public notice process and program coordination, applicants should allow at least 90-120 days for the processing of an individual permit application.

The department recommends that a preapplication meeting be held between the applicant, consultant, district and DEP staff for complex projects to ensure quality plan submittals.

All projects must demonstrate that the BMPs utilized will protect and maintain water quality designated and existing uses in accordance with the antidegradation requirements of Chapter 93. The E&S Plan must include measures that will

promote the maintenance and protection of existing water quality and its uses.

PERMIT COVERAGE AND APPROVALS

Persons conducting construction activities may not begin earth disturbance activities until after they receive their notice of permit coverage under the PAG-2 or the individual permit.

EROSION AND SEDIMENT CONTROL (E&S) PLANS

NPDES Construction Permits emphasize pollution prevention through the use of erosion and sediment control best management practices (BMPs). Guidance for preparing an E&S plan, as well as BMP specifications that meet the Chapter 102 requirements, can be found in the department's "Erosion and Sediment Pollution Control Program Manual" 363-2134-008). The 25 Pa. Code Chapter 102 regulations also identify 11 components that each E&S plan must contain. Since this is a BMP driven program, specific numeric effluent limits are not included in the permit and water quality sampling is not required.

POST CONSTRUCTION STORMWATER MANAGEMENT (PCSM) PLANS

A PCSM plan must be prepared and implemented to identify the BMPs to be installed to manage and treat the stormwater discharge protecting water quality after construction activities are terminated. Such BMPs should be designed to maximize infiltration technologies, eliminate (where possible) or minimize point source discharges to surface waters, preserve the integrity of stream channels, and protect the physical, biological and chemical qualities of the receiving surface water. Some counties have adopted Act 167 Stormwater Management Plans that incorporate measures to protect and maintain existing uses and to protect and maintain water quality in order to maintain those existing uses. Some municipalities control stormwater discharges through a Municipal Separate Storm Sewer System (MS4) NPDES Permit. In these areas where such plans exist and are supported by local ordinances, the applicant must design the PCSM plan in accordance with these ordinances. Permittees and co-permittees are responsible for proper installation of the PCSM plan BMPs prior to the submission of the Notice of Termination of this Permit. For more information on PCSM plans please refer to the DEP Comprehensive Stormwater Management Policy (392-0300-002). The department will presume that permittees utilizing the PCSM plan approach outlined in the NOI at Section E, demonstrate that the post construction BMPs utilized will protect and maintain water quality designated and existing uses in accordance with the antidegradation requirements of Chapter 93.

PREPAREDNESS, PREVENTION, & CONTINGENCY (PPC) PLANS

If the potential exists for causing accidental pollution of air, land, or water, or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials, the permittee or co-permittee must develop a PPC plan. The PPC plan shall be developed in accordance with department regulations at 25 Pa. Code Section 91.33 and 91.34. The PPC plan shall identify areas which may include, but are not limited to, waste management areas, raw material storage areas, temporary and permanent spoils storage areas, maintenance areas, and any other areas that may have the potential to cause non-compliance with the terms and conditions of this permit due to the storage, handling, or disposal of any toxic or hazardous substances such as oil, gasoline, pesticides, herbicides, solvents, etc. BMPs shall be developed and implemented for each identified area. The PPC plan shall be maintained on site at all times and shall be made available for review at the department's or authorized county conservation district's request. For more information on PPC plans please refer to the DEP technical guidance document, "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" (400-2200-001).

WHO IS THE RESPONSIBLE PARTY?

The operator of the construction activity is responsible for obtaining the NPDES stormwater permit and is the party or parties that either individually or collectively meet the following criteria:

1. Has oversight responsibility of earth disturbance activity on a project site or a portion thereof and has the ability to make modifications to the E&S plan or site specifications;

   and/or

2. Has day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the E&S plan.

Operators can include, but are not limited to, the landowner, the developer, general contractor or individual contractor.

Operational control can be shared or transferred between the landowner, developer and contractor. DEP has developed "Transferee/Co-Permittee" forms to allow for the flexibility of sharing the permit or the transfer of permit responsibilities.

DEP has also developed a "Notice of Termination (NOT)" form to be used by permittees or co-permittees when:

1. The operator is no longer responsible for the permitted activity;

   or

2. Stormwater discharges from the construction activity at the site have been terminated, and the site has been permanently stabilized.

FOR MORE INFORMATION, PLEASE CONTACT:

Your local county conservation district office, or the DEP Soils and Waterways Section at one of the following regional offices:

- Southcentral Region
  909 Elmerton Avenue
  Harrisburg, PA 17110
  717-705-4707
- Northcentral Region
  208 West Third Street
  Williamsport, PA 17701
  717-327-3574
- Southeast Region
  2 East Main Street
  Norristown, PA 19401
  484-250-5970
- Northeast Region
  2 Public Square
  Wilkes-Barre, PA 18711
  717-826-2511
- Southwest Region
  400 Waterfront Drive
  Pittsburgh, PA 15222
  412-442-4000
- Northwest Region
  230 Chestnut Street
  Meadville, PA 16335
  814-332-6942

or

Department of Environmental Protection
Bureau of Watershed Management
Division of Waterways, Wetlands and Erosion Control
P.O. Box 8775
Harrisburg, PA 17105-8775
717-787-6827

For more information, visit DEP's website at www.dep.state.pa.us, Keyword: "DEP Stormwater."

3630-PM-WQ0020 Rev. 9/2000
Instructions

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

INSTRUCTIONS FOR A GENERAL OR INDIVIDUAL NPDES PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES

GENERAL INFORMATION

To expedite the processing of the applicant's request, the Department asks that you use the most up-to-date permit/authorization package available.

This package is designed to assist the applicant in completing the Permit Application and in determining if any other environmental permits or approvals are needed for the project. Please type or print clearly when completing the form. If information needed is more than space allows, copy that appropriate page of the form and complete as required. If a question is not applicable to you or your project, write NA in the appropriate box.

Persons proposing earth disturbance activities which disturb five (5) or more acres may apply for the General NPDES permit for Stormwater Discharges from Construction Activities. Construction activities which are not eligible for coverage under the general permit as referenced in Pa. Code Chapter 92, must utilize the Individual NPDES Permit Application for stormwater discharges. These activities include, but are not limited to, construction activities of five (5) acres or more which discharge to "special protection" waters, construction activities which may affect existing water quality standards or threatened or endangered species and habitat, or construction activities that have the potential for toxic discharges.

Persons proposing discharges of stormwater associated with construction activities, where the project activity disturbs less than five (5) acres of total land area (which is not part of a larger common plan of development or sale) do not require coverage under either the general permit or the Individual NPDES Permit for Discharges of Stormwater from Construction Activities, but must comply with the requirements set forth in 25 Pa. Code Chapter 102.

Persons proposing stormwater discharges associated with construction activities should file an administratively complete acceptable application at the earliest possible date but no later than 90 days prior to the proposed commencement of construction for General Permits, and no later than 120 days for Individual Permits. Any construction activities which have not obtained NPDES permit coverage (general or Individual permit) are subject to possible enforcement actions by the Department, Conservation District or to third party litigation.

Operator Requirement.

Federal NPDES Regulations at 40 C.F.R. §§122.21(b) require that "when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit." When the operator/contractor and owner/developer of the facility or activity are not the same individual, corporation, partnership, or other entity, the Department recommends that both the operator and owner apply for coverage under a permit as co-permittees. If, prior to construction activities, no operator/contractor has been selected, then once selected, the operator/ contractor must either be made a co-permittee or the permit must be transferred to the contractor. Failure of the Operator to be added to the permit is a violation of federal law, as well as 25 Pa. Code Chapter 102, Erosion Control.

Erosion and Sediment (E&S) Control Plan Requirement.

An Erosion and Sediment (E&S) Control Plan must be submitted to the appropriate conservation district office either prior to or at the same time as the submission of the completed application. If the district is not the reviewing entity, the E&S Control Plan must be submitted to the appropriate regional office soils and waterways section. Prior submission of the E&S Control Plan will facilitate the permit application approval process. If the discharge of stormwater from construction activities is in a high quality or exceptional value watershed pursuant to Chapter 93 of the Department's regulations, the required E&S Control Plan must address any requirements in the Department's regulations at Chapter 102, Erosion Control, Section 102.4(b)(6) for activities in such waters, and address any recommendations for erosion and sediment control in the Department's Special Protection Waters Implementation Handbook.

Preparedness, Prevention and Contingency (PPC) Plan Requirement.

If there is the potential for causing accidental pollution of air, land, or water, or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials, the applicant must also develop a Preparedness, Prevention, and Contingency (PPC) Plan. For further information on PPC plan requirements, see the "Department's Guidelines for Developing Preparedness, prevention and Contingency Plans.

Municipal Notification.

Act 14, which amended the Commonwealth's Administrative Code (effective April 17, 1984) (71 P.S. §510-5) requires every applicant for a new, amended or revised Department permit to give written notice to each municipality and county government in which the activity with the discharge is located. The written notice must be received by the municipality and county government at least thirty (30) days before the Department may issue or deny an NPDES Permit.

In order to demonstrate compliance with Act 14, submit with the application:

(1) A copy of correspondence notifying the municipality and county government of your intention to discharge under this permit; and

(2) Evidence that the municipality and county government has received your notification. Acceptable forms of this evidence include certified mail receipt or written acknowledgement of the notification from the municipality.

Failure to provide a copy of the notification correspondence and evidence of municipal receipt of your notification with the application will delay processing of your application. Failure to comply with the Act 14 notification will result in the return of the application as incomplete.

Permit Application Filing Fee.

Except for state government agencies, a check for $250.00 for a General NPDES Permit or a check for $500.00 for an Individual NPDES Permit must be included with the application. The check must be made payable to the processing entity (either the local County Conservation District, Clean Water Fund or the "Commonwealth of Pennsylvania, Clean Water Fund", depending on which county). The check is to be dated within 10 days of the application submittal date.

SECTION A - PROJECT INFORMATION

(Check Application Type)

1. **Project Name.** Provide the name by which this proposed construction activity or project is, or will be, known (e.g., XYZ Subdivision, ABC Plant Expansion).

2. **Project Description.** Provide a detailed description of the project. If applying for a part of a larger project, broadly describe the entire project (e.g., a pipe crossing to serve the XYZ Subdivision).

3. **Total Project Acres** - Enter the total acreage of the planned project, including support areas such as offsite staging, borrow or spoil areas.

   Total Disturbed Acres - Enter the total acreage of the project or activity that will be disturbed by all earth disturbance activities over the life of the project.

4.-5. **Facility Latitude/Longitude and Quad Map Name** - Provide the latitude and longitude of the approximate center of the facility to the nearest 15 seconds. Locate the facility property on an 8 1/2 x 11 photo copy of the U.S.G.S. topo map area. The map must include the name of the appropriate 1:24,000 scale U.S.G.S. 7.5 minute series quadrangle map where the facility is located.

6. **Estimated Timetable for Earth Disturbance Activities** - Provide an estimate of the timetable for major phases during construction. For each major phase, provide a description of the activity undertaken during the phase, total acres associated with the phase, the amount of acres to be disturbed and the start and end dates for each phase of the activity.

7. **Existing and Previous Land Used** - List the existing and prior uses of the land under proposed construction for the previous 50 years, or a longer period if known.

8. **Quantitative Data** - Provide any available quantitative data on existing stormwater discharges and soil conditions. Provide the pollutants that were analyzed, the concentrations present, where the samples were taken, the sample type, and the date(s) and number of samples that were taken. Use separate sheets as necessary.

9. **Runoff Coefficient** - provide an estimated runoff coefficient of the site and the increase in impervious area following completion of construction activities.

10. **Description of Any Fill Materials** - Provide a description that characterizes any proposed fill materials.

11. **Summary of BMPS** - Summarize the proposed structural or nonstructural BMPs to be used to control pollution in stormwater discharges during construction and after construction has been completed. Attach additional sheets as necessary.

12. **Stormwater Discharges** - Indicate whether the stormwater is discharged to waters of the Commonwealth, including to a municipal separate storm sewer or a privately-owned storm sewer.

? If the stormwater is discharged to waters of the Commonwealth - provide the name of the receiving water, secondary water and/or watershed which will receive the drainage from the project.

? If the stormwater is discharged to a municipal separate storm sewer - provide the name of the municipal storm sewer operator, the county where it is located, and the ultimate receiving waters and watershed which will receive the drainage from the facility or project.

? If the stormwater is discharge to a private storm sewer - provide the name of the private storm sewer operator; the municipality and county where it is located, and the ultimate receiving waters and watershed which will receive the drainage from the project.

If the discharge is to something other than those listed above, provide a description of where the stormwater is discharged (a separate sheet may be attached).

13. **Receiving Water Name/Municipal Storm Sewer or Private Storm Sewer Operator** - Provide the receiving water name for those discharges to waters of the Commonwealth. Provide storm sewer operator names, if appropriate.

14. **Chapter 93 Receiving Water Classification** - Provide Chapter 93 Classifications and Secondary Waters. Receiving water classifications can be obtained from Chapter 93 of the Department's regulations, and the Department's "Statewide Existing Use Listing".

SECTION B – APPLICANT INFORMATION

The following information must be provided in order to identify the applicant.

Individual Last Name, First Name, MI. Required information.

Additional Individual Last Name, First Name, MI. Required for additional individuals or partners.

Mailing Address. The mailing address of the applicant identified above (this should *not* include locational data that is not appropriate for a mailpiece). In addition to the street number and name, PO Box#, RR# Box#, or Highway Contract# designations, use any appropriate designation and number to further define the mailing address of the applicant.

e.g.,	APT	(Apartment)	FL	(Floor)
	BLDG	(Building)	RM	(Room)
	DEPT	(Department)	STE	(Suite)

City, State, ZIP+4. Do *not* use abbreviations for the city name. Use the two-character abbreviation for the state. Include the four-digit extension to the ZIP code.

SECTION C - SITE INFORMATION

Site Name. The name of the site at the specific physical location. Do not use abbreviations, acronyms, etc.

Site Location. Provide the physical address of the location where the permitted activities will occur. No PO Box Numbers will be accepted for site location information. Provide the City (or municipality), State, and the ZIP+4, if known.

Detailed Written Directions to Site. When providing written directions, do not use PO Box address data. Include landmarks and approximate distances from the nearest highway.

Description of Site. Provide a written description of the proposed construction site (Examples: Commercial Development, Highway, Pipeline, etc.)

County and Municipality. Indicate the county(ies) and municipality(ies) in which the site is located. Check the appropriate box to identify the type of municipality entered (city, borough, township). If more than two municipalities or counties are affected, please list them on an attached separate sheet.

SECTION D - OTHER POLLUTANTS; PPC PLAN REQUIREMENT

If you will use and/or store chemicals, solvents or other waste or materials with the potential to cause accidental pollution during earth disturbance activities, a PPC Plan must be developed and implemented on site.

SECTION E - CONSULTANT

If this application was prepared by someone other than the applicant, such as a consultant or agent, that individual should complete this section of the form.

SECTION F - COMPLIANCE REVIEW

List other environmental permits pending or issued for this project, as well as a summary of any current and past non-compliance history, with any environmental law or regulation or department permit, order or schedule of compliance.

SECTION G - APPLICANT CERTIFICATION

The applicant(s) must complete the required certification that the information contained in this application is true, accurate, and complete and that the measures described in the attached summation of BMPs will be fully implemented and will meet the applicable standards and limitations of the permit; and that the applicant agrees to abide by the terms and conditions of the permit. The application shall be signed as follows:

a. **Corporations**

(1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2) The manager of one or more manufacturing, production or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. Partnerships or sole proprietorships - a general partner or the proprietor, respectively; or

c. Municipalities, State, Federal or other public agencies - either a principal executive officer or ranking elected official.

(1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

d. The application shall be notarized in the space provided.

3930-PM-WM0035 Rev. 12/2004

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

OFFICIAL USE ONLY
ID # _____
Date Received _____

NOTICE OF INTENT FOR COVERAGE UNDER THE GENERAL (PAG-2) NPDES PERMIT OR APPLICATION FOR AN INDIVIDUAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

READ THE STEP-BY-STEP INSTRUCTIONS PROVIDED IN THIS PERMIT APPLICATION PACKAGE BEFORE COMPLETING THIS FORM.

☐ **1 acre to less than 5 acres of disturbance with a point source discharge** ☐ **5 acres or larger disturbance**

PLEASE PRINT OR TYPE INFORMATION IN BLACK OR BLUE INK.

CHECK APPROPRIATE BOX	**GENERAL** ☐	**INDIVIDUAL** ☐	
APPLICATION TYPE	**NEW** ☐	**RENEWAL** ☐	**REVISED** ☐

SECTION A. E&S PLANNING REQUIREMENTS

1. Total Project Area (Acres): _____ Total Disturbed Area (Acres): _____

2. Project Name

3. Project Description

☐ Residential Subdivision ☐ Sewerage/Water System ☐ Private Road/Residence
☐ Commercial/Industrial ☐ Public Road ☐ Government Facility
☐ Utility Facility/Transmission ☐ Recreational ☐ Remediation/Restoration

4. Please provide the latitude and longitude coordinates for the center of the project. The coordinates should be in degrees, minutes and seconds (dd mm ss.ss) Check the collection method used to determine the lat and long coordinates. See the instructions for a description of the collection methods.

Latitude: _____°/ _____'/ _____" Longitude: _____°/ _____'/ _____"

Collection Method: ☐ EMAP ☐ HGIS ☐ GISDR ☐ ITPMP ☐ GPS ☐ WAAS ☐ LORAN

Check the horizontal reference datum (or projection datum) employed in the collection method. EMAP and HGIS (PNDI) have known datum and do not require checking here. ☐ NAD27 ☐ NAD83 ☐ GEO84

Enter the date of collection if the lat and long coordinates were derived from GPS, WAAS or LORAN. _____ mm _____ dd _____ yyyy

5. U.S.G.S. Quad Map Name _____

6. Estimated Timetable for Major Construction Activities: (Phased projects only)

Phase No. or Name	Description	Total Area	Disturbed Area	Start Date	End Date

7. Existing and Previous Uses of the Land Proposed for Construction (use separate sheet if necessary):

Existing Land Uses: ☐ Agriculture ☐ Forest/Woodland ☐ Barren ☐ Urban ☐ Brownfield ☐ Other

Description: _____

Previous Land Uses: ☐ Agriculture ☐ Forest/Woodland ☐ Barren ☐ Urban ☐ Brownfield ☐ Other

Description: _____

8. Potential Pollutants: (Submit the following data if soil contaminant, geology or past or present land use provides a potential for contaminated runoff from the project site) N/A ☐ Use additional sheets if necessary.

Pollutant	Concentration w/Units	Source	Sample Type	Date(s) / Number of Samples
(1)				
(2)				

Clearly indicate the source/location of the potential pollutant(s) on the Erosion and Sediment Control (E&S) Plan drawings, and describe in the E&S plan narrative what measures are proposed to manage and control discharges of these pollutants to eliminate the potential for pollution to surface waters of the Commonwealth.

9. Describe the type, source and location of any fill materials: **Be sure to read the instructions before completing this section.**

Clean Fill is uncontaminated, non-water soluble, non-decomposable, inert, solid material. The term includes soil, rock, stone, dredged material, used asphalt, and brick, block or concrete from construction and demolition activities that is separate from other waste and recognizable as such. The term does not include materials placed in or on the waters of the Commonwealth unless otherwise authorized.

Check the appropriate box

☐ All of the fill material placed on, or removed from the project site is Clean Fill, that, upon the performance of environmental due diligence, was found to have not been affected by a spill or release of a regulated substance.

☐ Some or all of the fill material placed on, or removed from, the project site is Clean Fill that has been affected by a spill or release of a regulated substance. Any person placing this fill on a property must use form FP-001 to certify the origin of the fill material and the results of analytical testing to qualify the material as clean fill. A copy of this form must be retained by the owner of the property receiving the fill (waste/spoil areas and cut/borrow areas).

10. Summary of E&S Control BMPs as detailed in the attached E&S Plan:

11. Stormwater Discharges to (during construction):

Waters of the Commonwealth ☐ Municipal Separate Storm Sewer ☐ Private Storm Sewer ☐

12. Receiving Water/Watershed Name:	Name of Municipal Storm Sewer Operator:	Name of Private Storm Sewer Operator:
13. Chapter 93 Receiving Water Classification:	Secondary Water:	Other:

SECTION B. APPLICANT INFORMATION

Applicant's Last Name	First Name	MI	Phone FAX
Organization Name or Registered Fictitious Name			Phone FAX
Mailing Address	City		State ZIP + 4
Co-Applicant's Last Name	First Name	MI	Phone FAX
Organization Name or Registered Fictitious Name			Phone FAX
Mailing Address	City		State ZIP + 4

SECTION C. SITE INFORMATION

Site Name					
Site Location					
Site Location -- City	State	ZIP+4			
Detailed Written Directions to Site					
County	Municipality		City	Boro	Twp
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

SECTION D. OTHER POLLUTANTS; PREPAREDNESS PREVENTION AND CONTINGENCY (PPC) PLAN

1. Will chemicals, solvents, other hazardous waste or materials that have the potential to cause accidental pollution during earth disturbance activities be used or stored on site? Yes ☐ No ☐ **(If yes, a PPC Plan is required)**

SECTION E. POST CONSTRUCTION STORMWATER MANAGEMENT (PCSM) PLAN
See the Attached Instructions on how to Complete This Section

All PCSM plans should be designed to maximize infiltration technology, eliminate or minimize point source discharges to surface waters, preserve the integrity of stream channels, and protect the physical, chemical and biological qualities of the receiving water. In addition to these water quality design features, all PCSM plans must comply with local water quantity or flood control requirements.

Check those that apply:

☐ The attached PCSM plan was developed to be consistent with existing local ordinances enacted under an Act 167 Stormwater Management Plan approved by the Department after July 2001.

☐ The attached PCSM plan was developed to be consistent with existing local ordinances that satisfy the requirements of an MS4 (NPDES Permit to Discharge Stormwater Through a Municipal Separate Storm Sewer System) permit.

☐ The attached PCSM plan was developed to employ water quality design features and BMPs that will manage any net increase in stormwater runoff volume resulting from the DEP recommended 2-year/24-hour frequency storm.

1. Please include the following as part of the PCSM plan:
   a. A written narrative.
   b. Plan drawings including construction details.
   c. Identification and location of post construction stormwater management BMPs. Such BMPs should address:
      - Infiltration
      - Volume and rate control
      - Water quality treatment
   d. Operation and maintenance procedures.
   e. Supporting calculations. (Supporting calculations and measurements are not required if the disturbed areas will be revegetated or otherwise stabilized with pervious material.)

2. Explain how post construction stormwater runoff volume will be managed if BMPs will not infiltrate the total net increase in stormwater runoff volume. (Net increase volume = Post construction runoff volume minus Pre-construction runoff volume):

   ☐ N/A (check N/A only if BMPs **will** infiltrate all of the Net Change in Runoff)

3. Are there existing post construction stormwater management (PCSM) BMPs at this location/site? ☐ YES ☐ NO

   Do you plan to use or expand any of these existing PCSM BMPs? ☐ YES ☐ NO

   List the existing PCSM BMPs that will be used or expanded.

4. SUMMARY TABLE FOR SUPPORTING CALCULATION AND MEASUREMENT DATA
See the Instructions on how to Complete This Section

☐ Check this box if supporting calculations and measurements are NOT required in accordance with Section E.1.e on the preceding page.

Design storm frequency _____ Rainfall amount _____ inches	Pre-construction	Post Construction	Net Change
Impervious area (acres)			
Volume of stormwater runoff (acre-feet) without planned stormwater BMPs			
Volume of stormwater runoff (acre-feet) with planned stormwater BMPs			
Stormwater discharge rate for the design frequency storm			

SUMMARY DESCRIPTION OF POST CONSTRUCTION STORMWATER BMPs

5. In the lists below, check the BMPs identified in the PCSM Plan. Indicate the function(s) of the BMP by checking **DR** for the function detention/retention; checking **IF** for infiltration/ recharge; or checking **WQ** for water quality treatment. More than one function may be checked for a BMP. List the stormwater volume and area of runoff to be treated by each BMP type. If any BMP in the PCSM Plan is not listed below, describe it in the space provided after "Other".

BMP	Function(s)	Volume of stormwater treated	Acres treated
☐ Wet ponds	☐ DR ☐ WQ		
☐ Constructed wetlands	☐ DR ☐ WQ		
☐ Retention basins	☐ DR		
☐ Detention basin	☐ DR		
☐ Underground detention	☐ DR		
☐ Extended detention basin	☐ DR ☐ WQ		
☐ Water quality fore bay	☐ DR ☐ WQ		
☐ Infiltration trench	☐ DR ☐ IF ☐ WQ		
☐ Infiltration bed	☐ DR ☐ IF ☐ WQ		
☐ Infiltration basin	☐ DR ☐ IF ☐ WQ		
☐ Porous pavement	☐ DR ☐ IF		
☐ Dry well	☐ DR ☐ IF		
☐ Bio-infiltration areas	☐ DR ☐ IF ☐ WQ		
☐ Rain gardens/Bio-retention	☐ DR ☐ WQ		
☐ Vegetated filter swales	☐ IF ☐ WQ		
☐ Sand/organic filters	☐ IF ☐ WQ		
☐ Natural area conservation	☐ DR ☐ IF ☐ WQ		
☐ Filter/buffer strips	☐ DR ☐ IF ☐ WQ		
☐ Surfaces drain to vegetated areas	☐ DR ☐ IF ☐ WQ		
☐ Downspouts to vegetated areas	☐ DR ☐ IF ☐ WQ		
☐ Green roofs	☐ DR ☐ WQ		
☐ Cisterns/rain barrels	☐ DR		
☐ Oil/grit separators	☐ WQ		
☐ Water quality inserts/inlets	☐ WQ		
☐ Street sweeping	☐ WQ		
☐ Other _____	☐ DR ☐ IF ☐ WQ		
☐ Other _____	☐ DR ☐ IF ☐ WQ		

SECTION F. CONSULTANT FOR THIS PROJECT

Last Name	First Name	MI

Title	Consulting Firm

Mailing Address

City	State	ZIP+4

Email	Phone	Ext
	FAX	

SECTION G. PERMIT COORDINATION AND COMPLIANCE REVIEW

Does the applicant (owner and/or operator) have or require any other Department permit or approval for this project?

☐ Yes ☐ No If yes, list each permit or approval, permit number, and description.

Compliance History Review:

Is/was applicant in violation of any permits issued by DEP? ☐ Yes ☐ No

If yes, list each permit that is/was in violation and provide compliance status of the permitted activity (use additional sheets to provide information on all permits).

Permit Program:

Permit Number:

Brief description of Non-Compliance:

Steps taken to achieve compliance and date(s) compliance achieved:

Current Compliance Status: ☐ In-Compliance ☐ In Non-Compliance

If the applicant is not in compliance with any environmental law or regulation, permit, order or schedule of compliance of the Department, provide a narrative description of how the applicant will achieve compliance including the appropriate milestones.

SECTION H. CERTIFICATION

Applicant Certification

I certify under penalty of law that this application and all related attachments were prepared by me or under my direction or supervision by qualified personnel to properly gather and evaluate the information submitted. Based on my own knowledge and on inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. The responsible official's signature also verifies that the activity is eligible to participate in the NPDES permit, and that BMP's, E&S Plan, PPC Plan, PCSM Plan, and other controls are being or will be, implemented to ensure that water quality standards and effluent limits are attained. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment or both for knowing violations pursuant to Section 309(c)(4) of the Clean Water Act and, 18 Pa. C.S. §§4903-4904.

Applicant	**Co-Applicant (if applicable)**
_____	_____
Print Name and Title of Person Signing	Print Name and Title of Person Signing
(____) _____	(____) _____
Telephone Number of Person Signing	Telephone Number of Person Signing
_____	_____
Signature of Applicant	Signature of Co-Applicant
_____	_____
Date Signed	Date Signed

Please note below the name, address and telephone number of the individual that should be contacted in the event additional information is required.

Name: _____

Address: _____

Telephone: (____) _____ FAX: (____) _____

Notarization:

Commonwealth of Pennsylvania

County of _____

Sworn to and Subscribed to Before Me This

_____ Day of _____, 20_____

NOTARY SEAL

_____

Notary Public

My Commission Expires: _____

INSTRUCTIONS FOR A GENERAL (PAG-2) OR INDIVIDUAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

GENERAL INFORMATION

Earth disturbance activities cannot begin until the permit authorization is received.

To expedite the processing of the applicant's request, the Department asks that you use the most up-to-date Notice of Intent (NOI) application package available.

This package is designed to assist the applicant in completing the Permit NOI/application and in determining if any other environmental permits or approvals are needed for the project. Please type or print clearly when completing the form. If information needed is more than space allows, copy that appropriate page of the form and complete as required. If a question is not applicable to you or your project, check N/A in the appropriate box.

Persons proposing earth disturbance activities which disturb five (5) or more acres, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves five (5) or more acres of earth disturbance over the life of the project, OR persons proposing earth disturbance activities with a point source discharge to surface waters of the Commonwealth that disturb from one (1) to less than five (5) acres, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves one (1) to less than five (5) acres of disturbance with a point source discharge to surface waters of the Commonwealth over the life of the project, must apply for the General NPDES Permit for Stormwater Discharges Associated With Construction Activities. **A point source is defined as** *any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, well, discrete fissure, or container from which pollutants are or may be discharged.* Construction activities which are not eligible for coverage under the general permit as referenced in 25 Pa. Code Chapter 92, must utilize the Individual NPDES Permit Application for Stormwater Discharges Associated With Construction Activities. These activities include, but are not limited to, construction activities that require an NPDES permit and are within "special protection" watersheds, construction activities that require an NPDES permit and which may affect existing water quality standards or threatened or endangered species and habitat, or construction activities that have the potential for toxic discharges.

Persons proposing stormwater discharges associated with construction activities should file an administratively complete and acceptable application at the earliest possible date but no later than 30 days prior to the proposed commencement of construction for General Permits, and no later than 120 days for Individual Permits. Any construction activities which have not obtained NPDES permit coverage (General or Individual permit) are subject to possible enforcement actions by the Department, conservation district or to third party litigation.

Operator Requirement.

When the operator/contractor and owner/developer of the facility or activity are not the same individual, corporation, partnership, or other entity, the Department recommends that both the operator and owner apply for coverage under a permit as co-permittees. If, prior to construction activities, no operator/contractor has been selected, then once selected, the operator/contractor must either be made a co-permittee or the permit must be transferred to the contractor. Failure of the operator to be added to the permit is a violation of federal law, and Department Regulations at 25 Pa. Code Chapter 102, Erosion and Sediment Control.

Erosion and Sediment (E & S) Control Plan Requirement.

For purposes of this permit, the E&S Control Plan must contain BMPs designed to minimize point source discharges to surface waters, preserve the integrity of stream channels and protect the physical, biological and chemical qualities of the receiving water.

An E&S Control Plan must be submitted to the Department or authorized county conservation district along with the completed application. If the construction activities are located in a high quality or exceptional value watershed pursuant to Chapter 93 of the Department's regulations, the required E&S Control Plan must address the special protection requirements in the Department's regulations at Chapter 102, Erosion and Sediment Control, Section 102.4(b)(6) for activities in such waters.

Please refer to the Department's Erosion and Sediment Pollution Control Manual for specific BMP information. The manual can be found on-line at www.dep.state.pa.us. Click on any eLibrary tab. On the left side of the screen click on "Technical Guidance Documents – Final." Then click on "Watershed Management." On the right side of screen click on "Erosion and Sediment Pollution Control Manual."

Preparedness, Prevention and Contingency (PPC) Plan Requirement.

The storage or use of hazardous wastes and materials, fuels, chemical or solvents during construction presents a potential of pollution or endangerment of public health and safety through the accidental release of toxic, hazardous, or other polluting materials. If such materials are stored or used during the construction activity, the applicant must develop and implement a PPC Plan for the project site. For further information on PPC Plan requirements, see the Department's Guidelines for the Development and Implementation of Environmental Emergency Response Plans. (document # 400-2200-001). The guidance can be found at www.dep.state.pa.us. Click on any eLibrary tab. On the left side of the screen click on "Technical Guidance Documents – Final." Type the document number 400-2200-001 in the search window and conduct the search.

Post Construction Stormwater Management (PCSM) Plans.

For Individual permit applications: Please contact the Soils and Waterways Section of the appropriate DEP Regional Office to review PCSM Plan requirements before preparing the plan.

A PCSM Plan identifying Best Management Practices (BMPs) to be installed, which manage and treat the stormwater discharges to protect water quality after construction, must be prepared and implemented. Such BMPs should be designed to maximize groundwater infiltration, to protect the structural integrity of the stream, and to protect and maintain existing and designated uses. Permittees and co-permittees are responsible for proper installation of the PCSM Plan BMPs prior to the submission of the Notice of Termination of this permit.

Technical references for stormwater BMPs can be found in Pennsylvania's Comprehensive Stormwater Management Policy and technical references are available on the Department's website www.dep.state.pa.us. Type the word stormwater in the DEP Keyword box. Then click on "Technical Information" for links to technical references from other states, OR click on "General Information" and look for the *"Comprehensive Stormwater Management Policy."*

Municipal Notification.

Acts 67, 68 and 127 require permit applicants to notify local governments of planned land development activities and to provide local governments the opportunity to identify any land use planning or zoning ordinance conflicts associated with the proposed project before the Department or authorized county conservation district completes its review of the NOI/permit application. A sample of the municipal notification is included as part of these instructions. Written notice must be received by the municipality and county government in which the activity is located at least 30 days before the Department may issue or deny an NPDES Permit.

The permit applicant must submit the following along with the application/NOI:

(1) A copy of correspondence notifying the municipality and county government of your intention to discharge under this permit; and

(2) Evidence that the municipality and county government has received your notification. Acceptable forms of this evidence include certified mail receipt or written acknowledgement of the notification from the municipality.

Failure to provide a copy of the notification correspondence and evidence of municipal receipt of your notification with the application will delay processing of your application. Failure to comply with municipal notification will result in the return of the application as incomplete.

Permit Application Filing Fee.

Except for state government agencies, a check for $250 for a General NPDES Permit or a check for $500 for an Individual NPDES Permit must be included with the application. The check must be made payable to the processing entity (the appropriate county conservation district, Clean Water Fund if application is submitted to the county, or the "Commonwealth of Pennsylvania Clean Water Fund", if the application is submitted to the DEP Regional Office). The check is to be dated within ten days of the application submittal date.

PERMIT APPLICATION

The county conservation district or DEP Regional Office will give the applicant written notification of permit approval or denial. Earth disturbance activity cannot begin until permit authorization is received.

The following information must be submitted in order for the application to be considered administratively complete.

Section A. E&S Planning Requirements.

1. **Total Project Area** is the entire area of activity, development or sale including, the area of an earth disturbance activity, the area planned for an earth disturbance activity and other areas which are not subject to an earth disturbance activity. Enter the size of the area in acres to the nearest tenth of an acre.

   Total Disturbed Area is that portion of the total project area where earth disturbance activities are planned to occur over the life of the project. For phased projects, this refers to the disturbed

area of the initial project phase plus the planned disturbed areas of subsequent project phases. Enter the size of the area in acres to the nearest tenth of an acre.

2. **Project Name.** Provide the name by which this proposed construction activity or project is, or will be, known (e.g., XYZ Subdivision, ABC Plant Expansion).

3. **Project Description.** Provide a detailed written description of the project. If applying for a phased project, broadly describe the entire project. Also check the box that best describes the General Type of Activity. School projects should check the government facility box. Church projects should check the Commercial/Industrial box.

4. **Latitude and Longitude.** Provide the latitude and longitude coordinates for the approximate center of the project area or facility. The coordinates should be in degrees, minutes and seconds. It is important to identify the method used to determine the latitude and longitude. Check the appropriate box matching the collection method used. Also check the appropriate box matching the Horizontal Reference Datum (or projection datum) employed in the latitude and longitude collection process. Identify the date of collection (mm/dd/yyyy) if latitude & longitude coordinates were collected via GPS, WAAS and LORAN.

   Description of collection methods.

   EMAP: Method based on eMAP Pa program. (www.emappa.dep.state.pa.us)

   HGIS: Method based on the Pennsylvania Natural Heritage Program database. (formerly known as PNDI) The database is located at www.naturalheritage.state.pa.us .

   GISDR: Method based on the use of GIS and Digital Raster Graphic 1:24,000 scale USGS 7.5 minute quadrangle maps.

   ITPMP: Method based on map interpolation of USGS 7.5 minute quadrangle maps.

   GPS: Global Positioning method with unspecified parameters.

   WAAS: Method base on GPS WAAS differentially correct.

   LORAN: Method based on Loran C.

   Types of Horizontal Reference Datum (or projection datum)

   NAD27: North American Datum of 1927

   NAD83: North American Datum of 1983

   GEO84: World Geodetic System of 1984 (WGS84)

5. **U.S.G.S. Quad Map Name**. Locate the project area on an 8 ½" x 11" photocopy of the U.S.G.S. topo map area. The map must include the name of the appropriate 1:24,000 scale U.S.G.S. 7.5 minute series quadrangle map where the project is located.

6. **Estimated Timetable for Major Construction Activities.** If the project is to be phased, provide an estimate of the timetable for major phases during construction. For each major phase, provide a description of the activity undertaken during the phase, total area of the phase, the disturbed area of the phase and the start and end dates for each phase of the activity. The sum of the total areas and disturbed areas listed under line 6 should be equal to the size of the Total Project Area and Total Disturbed Area respectively, listed on line 1 of the NOI/application form.

7. **Existing and Previous Uses of the Land Proposed for Construction.** Use the checkboxes to identify the existing and prior land uses of the land under proposed construction.

   Existing land uses is the dominant land use of the project site for the five (5) years preceding the planned project.

   Previous land uses is the land use(s) of the project site for the past 50 years, or longer if known.

   Descriptions of Land Use Types.

   Agriculture: includes cropland, pasture, orchards, vineyards, nurseries, horticulture areas, confined animal feeding operations, fallow fields, reverting cropland or pasture/field (can include scrub shrub land).

   Forest/Woodland: includes deciduous, evergreen or mixed forest land, woodlots in suburban or urban areas.

   Barren: includes beaches, sandy areas other than beaches, bare exposed rock (bedrock, talus or fill), strip mines, quarries, transitional zones (refers to areas previously bare but becoming vegetated.)

   Urban: includes cities, towns, residential areas, institutional areas, commercial areas, industrial areas, suburban or build up areas, transportation corridors, railways, airports, ports, utilities – water, sewer, electric, petroleum, communications, etc.

Brownfield: includes land that is being remediated or has been remediated under PA DEP's Land Recycling program.

Other: provide a brief description of land use or cover.

8. **Potential Pollutants.** If the site's geology, past or present land use, or suspected soil contaminants provides a potential for contaminated runoff from the project site, the applicant must provide the requested data for the concerned geologic features, soil conditions or existing stormwater discharges. Identify the pollutants that were analyzed, their concentrations, present source (where the samples were taken), the sample type, and the date(s) and number of samples that were taken. Use separate sheets as necessary. The source/location of the identified potential pollutant(s) must be clearly indicated on the E&S plan drawings, and the proposed measures to manage and control discharges of these pollutants must be described in the E&S plan narrative.

9. **Describe the type, source and location of any fill materials:** Use the check boxes to identify the type of fill material(s) placed on, or taken from, the project site. Use the space between the check boxes to provide the source (where removed from) and location (where placed) of the fill materials.

   Applicants must use environmental due diligence to ensure that the fill material associated with this project qualifies as Clean Fill. Definitions of Clean Fill and Environmental Due Diligence are provided below. All fill material must be used in accordance with the Department's policy *"Management of Fill"*, document number 258-2182-773. A copy of this policy is available online at www.dep.state.pa.us . Click on any eLibrary tab. On the left side of the screen click on "Technical Guidance Documents – Final." Then type the document number 258-2182-773 into the search window and conduct the search. Click on "Management of Fill."

   Clean Fill is defined as: Uncontaminated, non-water soluble, non-decomposable, inert, solid material. The term includes soil, rock, stone, dredged material, used asphalt, and brick, block or concrete from construction and demolition activities that is separate from other waste and is recognizable as such. The term does not include materials placed in or on the waters of the Commonwealth unless otherwise authorized. (The term "used asphalt" does not include milled asphalt or asphalt that has been processed for re-use).

   Clean Fill affected by a spill or release of a regulated substance: Fill materials affected by a spill or release of a regulated substance still qualifies as clean fill provided the testing reveals that the fill material contains concentrations of regulated substances that are below the residential limits in Tables FP-1a and FP-1b found in the Department's policy *"Management of Fill"*.

   Any person placing clean fill that has been affected by a spill or release of a regulated substance must use form FP-001 to certify the origin of the fill material and the results of the analytical testing to qualify the material as clean fill. Form FP-001 must be retained by the owner of the property receiving the fill. A copy of Form FP-001 can be found at the end of these instructions.

   Environmental due diligence: The applicant must perform environmental due diligence to determine if the fill materials associated with the project qualify as clean fill. Environmental due diligence is defined as: *Investigative techniques, including, but not limited to, visual property inspections, electronic data base searches, review of property ownership, review of property use history, Sanborn maps, environmental questionnaires, transaction screens, analytical testing, environmental assessments or audits.* **Analytical testing is not a required part of due diligence unless visual inspection and/or review of the past land use of the property indicates that the fill may have been subjected to a spill or release of regulated substance.** If the fill may have been affected by a spill or release of a regulated substance, it must be tested to determine if it qualifies as clean fill. Testing should be performed in accordance with Appendix A of the Department's policy *"Management of Fill"*.

   Fill material that does not qualify as clean fill is regulated fill. Regulated fill is waste and must be managed in accordance with the Department's municipal or residual waste regulations based on 25 Pa. Code Chapters 287 Residual Waste Management or 271 Municipal Waste Management, whichever is applicable. These regulations are available on-line at www.pacode.com .

10. **Summary of E&S Control BMPS.** Summarize the proposed structural or non-structural BMPs to be used to control pollution in stormwater

discharges during construction. Attach additional sheets as necessary.

11. **Stormwater Discharges.** Indicate whether the stormwater is discharged to waters of the Commonwealth, which includes municipal separate storm sewers and privately-owned storm sewers.

12. **Receiving Water/Watershed Name, Municipal Storm Sewer or Private Storm Sewer Operator.** Provide the receiving water name for those discharges to waters of the Commonwealth. Provide storm sewer operator names, if appropriate.

    - If the stormwater is discharged to waters of the Commonwealth, provide the name of the receiving water, secondary water and/or watershed which will receive the drainage from the project.
    - If the stormwater is discharged to a municipal separate storm sewer, provide the name of the municipal storm sewer operator, the county where it is located, and the ultimate receiving waters and watershed which will receive the drainage from the facility or project.
    - If the stormwater is discharged to a private storm sewer, provide the name of the private storm sewer operator, the municipality and county where it is located, and the ultimate receiving waters and watershed which will receive the drainage from the project.

    If the discharge is to something other than those listed above, provide a description of where the stormwater is discharged (a separate sheet may be attached).

13. **Chapter 93 Receiving Water Classification.** Provide Chapter 93 Classifications and Secondary Waters. Receiving water designated use can be obtained from Chapter 93 of the Department's regulations located online at www.pacode.com and the existing use can be obtained from the Department's "Statewide Existing Use Listing" on the Department's website www.dep.state.pa.us (DEP Keyword "existing use").

Section B. Applicant Information

The following information must be provided in order to identify the applicant.

Applicant's Last Name, First Name, MI. Required information. Enter the Name of the Corporation, Partnership, Agency or Individual.

Co-Applicant's Last Name, First Name, MI. Required for additional individuals, partners or operators to be co-permittee. Enter the Name of the Corporation, Partnership, Agency or Individual.

Mailing Address. The mailing address of the Owner/Operator (applicant) identified above (this should *not* include locational data that is not appropriate for a mailpiece). In addition to the street number and name, PO Box#, RR# Box#, or Highway Contract# designations, use any appropriate designation and number to further define the mailing address of the applicant.

e.g.,	APT	(Apartment)	FL	(Floor)
	BLDG	(Building)	RM	(Room)
	DEPT	(Department)	STE	(Suite)

City, State, ZIP+4. Do *not* use abbreviations for the city name. Use the two-character abbreviation for the state. Include the four-digit extension to the ZIP code.

Section C - Site Information

Site Name. The name of the site at the specific physical location. Do not use abbreviations, acronyms, etc.

Site Location. Provide the physical address of the location where the permitted activities will occur. No PO Box Numbers will be accepted for site location information. Provide the City (or municipality), State, and the ZIP+4, if known.

Detailed Written Directions to Site. When providing written directions, do not use PO Box address data. Include landmarks and approximate distances from the nearest highway.

County and Municipality. Indicate the county(ies) and municipality(ies) in which the site is located. Check the appropriate box to identify the type of municipality entered (city, borough, township). If more than two municipalities or counties are affected, please list them on an attached separate sheet.

Section D. Other Pollutants; Preparedness Prevention and Contingency (PPC) Plan

If you will use and/or store chemicals, solvents or other waste or materials that have the potential to cause accidental pollution during earth disturbance activities, a PPC Plan must be developed and implemented on site.

Section E. Post Construction Stormwater Management (PCSM) Plan

The attached PCSM Plan must be a separate, distinct and complete plan.

1. Attach three (3) copies of the PCSM Plan that includes a written narrative, identification and location of BMPs, plan drawings of BMPs,

operation and maintenance procedures and supporting calculations and measurements (when necessary). The PCSM Plan shall be consistent with local ordinances enacted under an Act 167 Stormwater Management Plan that incorporated measures to protect and maintain existing uses and water quality (plans approved after July 2001) OR be consistent with local ordinances developed to satisfy the requirements of an MS4 permit (NPDES Permit to Discharge Stormwater Through a Municipal Separate Storm Sewer System). These ordinances must have been adopted to meet this requirement.

In the absence of these local ordinances, the PCSM Plan should provide design features and BMPs that will manage any net increase in stormwater runoff volume after the completion of the project. The Department recommends that these design features be based on a 2-year/24-hour frequency storm.

The PCSM Plan should be designed to maximize infiltration technologies, eliminate (where possible) or minimize point source discharges to surface waters, preserve the integrity of stream channels, and protect the physical, biological and chemical qualities of the receiving surface water. In addition to these water quality features, all PCSM plans must comply with local water quantity and/or flood control requirements.

Supporting calculations and measurements

Supporting calculations and measurements are not required if ALL the earth disturbance area within the project boundary is permanently revegetated or otherwise permanently stabilized with pervious material. Generally, this would include such projects as pipe lines and mine reclamation. All other projects must provide supporting stormwater runoff calculations and measurements. Projects such as residential subdivision, commercial or industrial development and highway construction normally **DO NOT** maintain the site's natural ability to control runoff.

2. If the proposed post construction stormwater BMPs will not infiltrate all the net increase in stormwater runoff volume, please explain how you plan to manage the increased stormwater runoff volume.

3. Please check the appropriate box and list the existing BMPs that will be used or expanded.

4. Summary Table For Supporting Calculation and Measurement Data. Please provide this summary data from the calculations and measures submitted as part of the PCSM Plan unless supporting calculations and measurements are not required as per item 1.e. of Section E.

The Summary Table of Supporting Calculations and Measurements (Table) is designed to provide a snapshot idea of stormwater runoff amounts before and after project completion. Although they may be used for crosschecking with the PCSM Plan, the figures presented in the table are not meant to be a substitute for supporting calculations of the PCSM Plan. The purpose of the Table is to give the permit reviewer an idea of how the stormwater hydrology regime will be changed by the project. Please use the following descriptions for purposes of providing figures in the Table. In addition to these definitions, please see the page "How to Complete the Summary Table" located at the end of these instructions for further explanation.

Design storm: The frequency storm event used for the purposes of designing the Post Construction Stormwater Management Plan should be consistent with local stormwater management ordinances developed to satisfy the requirements of an Act 167 Stormwater Management Plan approved by the Department after July 2001, or an MS4 permit. In the absence of said local ordinance, the design storm should be the 2-year/24-hour frequency storm.

Pre-construction: The dominant land condition or land use of the project site for the five (5) years preceding the planned project.

Impervious area (Pre-construction): The amount of impervious area on the project site as determined by the dominant land condition or land use for the five (5) years preceding the planned project.

Impervious area (Post construction): The amount of impervious area on the project site after the completion of the project.

Volume of stormwater runoff without planned stormwater BMPs (Pre-construction): The amount of stormwater that would runoff the project site during the design storm event as determined by the dominant land condition or land use for the five (5) years preceding the planned project.

Volume of stormwater runoff without planned stormwater BMPs (Post construction): The amount of stormwater that would runoff from the project site after construction if the planned stormwater BMPs were not installed.

Volume of stormwater runoff with planned stormwater BMPs (Post construction): The amount of stormwater that will runoff from the project site after the planned stormwater BMPs are installed.

Stormwater discharge rate for the design frequency storm (Pre-construction): Show the

stormwater runoff discharge rate for the design frequency storm event as determined by the dominant land condition or land use for the five (5) years preceding the planned project.

Stormwater discharge rate for the design frequency storm (Post construction): Show the stormwater runoff discharge rate for the storm event after the planned stormwater BMPs are installed.

5. Please check all the appropriate boxes. If there is no check box for a planned BMP, check the box for "other" and list the BMP(s). Do not list erosion and sediment control BMPs.

Section F. Consultant For This Project

If this application was prepared by someone other than the applicant, such as a consultant or agent, that individual should complete this section of the form.

Section G. Permit Coordination And Compliance Review

List other environmental permits pending or issued for this project, as well as a summary of any current and past non-compliance history with any environmental law or regulation or Department permit, order or schedule of compliance within the past five years.

Section H. Certification

The applicant(s) must complete the required certification that the information contained in this application is true, accurate, and complete and that the measures described in the attached summation of all BMPs pursuant to the E&S Plan, PPC Plan and PCSM Plan will be fully implemented and will meet the applicable standards and limitations of the permit; and that the applicant agrees to abide by the terms and conditions of the permit pursuant to 18 Pa. C.S. §§4903-4904 and Section 309(c)(4) of the Clean Water Act. The application shall be signed as follows:

a. Corporations

   (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

   (2) The manager of one or more manufacturing, production or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. Partnerships or sole proprietorships - a general partner or the proprietor, respectively; or

c. Municipalities, State, Federal or other public agencies - either a principal executive officer or ranking elected official.

   (1) The chief executive officer of the agency; or

   (2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

d. The application shall be notarized in the space provided.

APPLICATION CHECKLISTS

The appropriate Application Checklist attached to the NOI/Application must be completed and returned with the general permit NOI and/or the individual permit application.

INCOMPLETE APPLICATIONS

NOI/applications that are incomplete will be returned to the applicant, which may delay processing.

This letter is provided as an example only. Applicants may draft their own letter of notification. This letter must be modified to meet the specific requirements of the project if the applicant chooses to use the following text.

SAMPLE NOTICE LETTER TO MUNICIPALITY AND COUNTY

date: _____

Dear (Municipal Secretary): or
Dear (County Commissioners):

This municipal notice is to inform you that (I/we) are applying for a (General/Individual) NPDES Permit for Stormwater Discharges Associated with Construction Activities from the Pennsylvania Department of Environmental Protection (DEP):

Applicant Contact: _____

Project Location: _____

Project Description: _____

_____

Acts 67, 68 and 127 of 2000 amended the Municipalities Planning Code (MPC) and directs state agencies to consider comprehensive plans and zoning ordinances when reviewing applications for permitting of facilities or infrastructure, and specifies that state agencies may rely upon comprehensive plans and zoning ordinances under certain conditions as described in Sections 619.2 and 1105 of the MPC.

Enclosed is a complete copy of the permit application completed by the applicant for this project. Also enclosed is an attached sheet containing answers to the Land Use Information questions found in the DEP General Information Form (GIF). This list of questions and answers is being provided in lieu of a completed GIF. (*This is an optional sentence since the applicant may choose to provide a complete GIF form instead.*) DEP invites you to review the attached application and comment on the accuracy of answers provided with regard to land use aspects of this project; please be specific to DEP and focus on the relationship to zoning ordinances. If you wish to submit comments to DEP to become part of a land use review of this project, you must respond within 30 days to the DEP regional office referenced in this letter. If there are no land use comments received by the end of the comment period, DEP will assume that there are no substantive land use conflicts and proceed with the normal application review process.

For more information about this land use review process, visit DEP's website at www.dep.state.pa.us, Keyword: "DEP Land Use Reviews."

Sincerely,

Enclosures

cc: _____/county planning agencies

Land Use Information Questions

1.	Is there a municipal comprehensive plan(s)?	☐ Yes	☐ No
2.	Is there a county comprehensive plan(s)?	☐ Yes	☐ No
3.	Is there a multi-municipal or multi-county comprehensive plan(s)?	☐ Yes	☐ No
4.	Is the proposed project plan consistent with these plan(s)? *If no plan exists, answer "Yes".*	☐ Yes	☐ No
5.	Is there a municipal zoning ordinance(s)?	☐ Yes	☐ No
6.	Is there a joint municipal zoning ordinance(s)?	☐ Yes	☐ No
7.	Will the proposed project require zoning approval (e.g., special exception, conditional approval, re-zoning, variance)? *If zoning approval has already been received, attach the appropriate documentation.*	☐ Yes	☐ No
8.	Are any zoning ordinances that are applicable to this project currently the subject of any type of legal proceeding?	☐ Yes	☐ No
9.	Will the project be located on a site that has been or is being remediated under DEP's Land Recycling Program?	☐ Yes	☐ No
10.	Will the project result in reclamation of abandoned mine lands through re-mining or as part of DEP's Reclaim PA Program?	☐ Yes	☐ No
11.	Will the project be located in an agricultural security area or an area protected under an agricultural conservation easement?	☐ Yes	☐ No
12.	Will the project be located in a Keystone Opportunity Zone or Enterprise Development Area?	☐ Yes	☐ No
13.	Will the project be located in a Designated Growth Area as defined by the Municipalities Planning Code?	☐ Yes	☐ No

NOTE: Detach this page, complete the information and submit it along with your notification letter to the concerned Municipality and County.

Form FP-001
CERTIFICATION OF ORIGIN OF CLEAN FILL

I, the undersigned, certify that fill material that has been determined to be clean fill has been placed on the following property:

Property Name: _____

Current Owner of Property: _____

Property Address: _____

_____

_____

This fill material will be used solely for property improvement or construction purposes.

Copies of the laboratory analyses that confirm that this material is clean fill are attached to this form.

Date:

Name: _____

Title: _____

Address: _____

_____

_____

Phone: _____

Signature: _____ Date: _____

This form is to be maintained by the owner of the property receiving fill material. If a property received fill from multiple sources, a separate certification form is required for each source.

How to Complete the Summary Table

(This table is located in Section E, page 5 of the Notice of Intent application form)

4.	SUMMARY TABLE FOR SUPPORTING CALCULATION AND MEASUREMENT DATA See the Instructions on how to Complete This Section		
☐ Check this box if supporting calculations and measurements are NOT required in accordance with Section E.1.e on the preceding page.			
Design storm frequency _____ Rainfall amount _____ inches	**Pre-construction**	**Post Construction**	**Net Change**
Impervious area (acres)	1	2	3
Volume of stormwater runoff (acre-feet) without planned stormwater BMPs	4	5	6
Volume of stormwater runoff (acre-feet) with planned stormwater BMPs		7	8
Stormwater discharge rate for the design frequency storm	9	10	11

Box 1. **Pre-construction impervious area**: The total acres of impervious area on the project site before construction activities begin.

Box 2. **Post construction impervious area**: The total acres of impervious area on the project site after construction activities have finished.

Box 3. **Net change of impervious area**: The difference between the acres of impervious area listed in Box 1 and Box 2.

Box 4. **Pre-construction stormwater runoff volume without planned BMPs**: The amount of stormwater runoff volume from the project site that would result from the design storm occurrence before construction activities begin.

Box 5. **Post construction stormwater runoff volume without planned BMPs**: The amount of stormwater runoff volume from the project site that would result from the design storm occurrence after construction activities have finished assuming that no stormwater infiltration or retention BMPs have been installed.

Box 6. **Net change in stormwater volume without planned BMPs**: The difference between the amounts of stormwater runoff volume listed in Box 4 and Box 5.

Box 7. **Post construction stormwater runoff volume with planned BMPs**: The amount of stormwater runoff volume from the project site that would result from the design storm occurrence after construction activities have finished and the planned stormwater infiltration or retention BMPs have been installed.

Box 8. **Net change in stormwater runoff volume with planned BMPs**: The difference between the amounts of stormwater runoff volume listed in Box 4 and Box 7.

Box 9. **Pre-construction stormwater discharge rate**: The stormwater runoff discharge rate for the design frequency storm as determined by the land use for the past five years.

Box 10. **Post construction stormwater discharge rate**: The stormwater runoff discharge rate for the design frequency storm event after all planned stormwater BMPs are installed.

Box 11. **Net change stormwater discharge rate**: The difference between the stormwater runoff discharge rates listed in Box 9 and Box 10.

VSMP General Permit Registration Statement - Construction Activity Stormwater Discharges (DCR01)

(Please Type or Print All Information)

1. **Construction Activity Operator** *(NOTE: The permit will be issued to this operator, and the Certification in Item #13 must be signed by the appropriate person associated with this operator [see the instructions])*

   Name:_____

   Mailing Address:_____

   City:_____ State:_____ Zip:_____ Phone:_____

2. **Location of Construction Activity**

   Name:_____

   Address:_____

   City:_____ State:_____ Zip:_____

   If street address unavailable: Latitude _____ Longitude _____

   Location of all Offsite Support Activities to be Covered Under the Permit

   Name:_____

   Address:_____

   City:_____ State:_____ Zip:_____

   If street address unavailable: Latitude _____ Longitude _____

3. **Status:** Federal ☐ State ☐ Public ☐ Private ☐ (Check one only)
4. **The Nature of the Construction Project** (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.):

   _____

5. **Name of the Receiving Water(s)** _____
6. **If the Discharge is Through a Municipal Separate Storm Sewer System (MS4), the Name of the Municipal Operator of the Storm Sewer:**_____
7. **Estimated Project Start Date:** _____ **Estimated Project Completion Date:** _____
8. **Total Land Area of Development** (to the nearest one-tenth acre): _____

   Estimated Area to be Disturbed (to the nearest one-tenth acre): _____

9. **Is the area to be disturbed by the construction activity part of a larger common plan of development or sale?** Yes☐ No☐
10. **Map:** Attach a topographic map or other map which clearly shows the location of the construction activity, the area to be disturbed (including offsite support activities), and the receiving stream(s) for the stormwater discharge(s).

NOTE: A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General VSMP Permit for Discharges of Stormwater from Construction Activities prior to submitting this Registration Statement. By signing this Registration Statement you are certifying that the SWPPP has been prepared.

11. **Location Where the SWPPP May be Viewed, and the Name and Phone Number of a Contact Person:** *(NOTE: The contact person should be a person knowledgeable in the principles and practice of erosion and sediment controls, that is a licensed professional engineer, Responsible Land Disturber (RLD), or other knowledgeable person who (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment)*

    Location of SWPPP: _____

    Contact Person Name: _____ Phone Number: _____

12. **Permanent BMPs:** Attach a list of permanent BMPs (both structural and non-structural) that will be installed at the construction site. For each BMP, include the following information: (a) Type of BMP to be installed; (b) Geographic location (county - State Hydrologic Unit Code); (c) Waterbody the BMP will discharge into; and, (d) Number of acres that will be treated (to the nearest quarter acre).
13. **Certification:** "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

    Print Name: _____ Title: _____

    Signature:_____ Date:_____

(Please sign in INK. The person signing this form must be associated with the operator identified in Item #1 above.)

For Department of Conservation and Recreation Use Only

Accepted/Not Accepted by: _____ Date:_____

Basin _____ Stream Class _____ Section _____ Special Standards _____

(DCR 199-146) (09/04)

DCR
Department of Conservation & Recreation

INSTRUCTIONS for FORM DCR 199-146

VSMP General Permit Registration Statement - Construction Activity Stormwater Discharges

General
A Registration Statement must be submitted when an operator makes application to the Department of Conservation and Recreation for coverage under the General VSMP Permit for Stormwater Discharges From Construction Activities.

Section 1 Activity Operator Information
For the purposes of this general permit, "Operator" means any person, company, corporation, partnership, etc., associated with a construction project that meets either of the following two criteria: (1) has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). The entities who are considered operators will commonly consist of the owner or developer of a project (the party with control of project specifications) and the general contractor (the party with day to day operational control of the activities at the project site which are necessary to ensure compliance with the permit). Contractors and subcontractors who are under the general supervision of the general contractor are not considered operators and would not need to submit a registration statement. Give the legal name of the operator, do not use a colloquial name. Enter the complete address and phone number of the operator. **The permit will be issued to this operator.**

Section 2 Activity Location Information
Enter the activity's official name and complete street address, including city, state and ZIP code. If the site lacks a street address, enter the latitude and longitude to the nearest 15 seconds of the approximate center of the site.

Offsite Support Activities
The general permit may be used to authorize stormwater discharges from activities that are located away from the construction site (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that they meet the following criteria: (1) The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity; (2) The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and (3) Appropriate controls and measures are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

Provide the information required for each offsite support activity seeking coverage. Support activities located off site are not required to be covered under this general permit. Discharges of stormwater from offsite support activities may be authorized under another VSMP permit. Where stormwater discharges from offsite support activities are not authorized under this general permit, the land area of the offsite support activity need not be included in determining the total land disturbance acreage of the activity seeking general permit coverage.

Section 3 Legal Status
Indicate the appropriate legal status of the operator of the site.

Section 4 Nature of the Construction Project
Examples: commercial, residential, agricultural, oil and gas, etc.

Section 5 Name of Receiving Water(s)
Enter the name of the receiving water(s) for all stormwater discharge(s), including any stormwater discharges from offsite support activities to be covered under the permit.

Section 6 Name of MS4 Operator
If the stormwater is discharged through a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4.

Section 7 Estimated Project Start Date
Enter the date project is projected to start.

Estimated Project Completion Date
Enter the estimated project completion date.

Section 8 Total Land Area of the Development
Enter the total area (to the nearest 1/4 acre) of the development (meaning the total acreage of the larger common plan of development or sale). Include the acreage of any offsite support activities to be covered under the permit.

Estimated Acres to be Disturbed
Enter an estimate of the total number of acres of the site (to the nearest 1/4 acre) on which soil will be disturbed.

Section 9 Larger Common Plan of Development or Sale
Indicate if the area to be disturbed by the construction activity is part of a larger common plan of development or sale.

Section 10 Map
Attach a topographic map or other map which clearly shows the location of the construction activity, the area to be disturbed, and the receiving stream(s) for the stormwater discharge(s), including any offsite support activities to be covered under the permit.

Section 11 Location of Pollution Prevention Plan (SWPPP)
A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General VSMP Permit for Discharges of Stormwater from Construction Activities prior to submitting this Registration Statement. Give the location where the stormwater pollution prevention plan for the site may be viewed, and the name and phone number of a contact person. The contact person should be a person knowledgeable in the principles and practice of erosion and sediment controls, such as a licensed professional engineer, Responsible Land Disturber (RLD), or other knowledgeable person who (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment.

Section 12 Permanent BMPs That Will Be Installed
Attach a list of the permanent BMPs (both structural and non-structural) that will be installed at the construction site. For each BMP, include the following information:

(a) Type of BMP to be installed
(b) Geographic location (county - State Hydrologic Unit Code)
(c) Waterbody the BMP will discharge into
(d) Number of acres that will be treated (to the nearest quarter acre)

Section 13 Certification
The operator identified in Section 1 of this Registration Statement is responsible for certifying and submitting this Registration Statement. Please sign the form in INK. State statutes provide for severe penalties for submitting false information on this Registration Statement. State regulations require this Registration Statement to be signed as follows:

For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (2) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; ***[Note: if the title of the individual signing this form is "Plant Manager", submit a written verification that the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures]***;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

The Department of Conservation and Recreation reserves the right to request additional information not directly addressed by the Registration Statement if, in its discretion, a facility or operation poses a potential impact on water quality.

MARYLAND DEPARTMENT OF THE ENVIRONMENT
GENERAL PERMIT FOR CONSTRUCTION ACTIVITY
General NPDES Permit Number MDR10
State Discharge Permit Number 03 GP

EFFECTIVE DATE: MARCH 1, 2003 EXPIRATION DATE: FEBRUARY 28, 2008

TABLE OF CONTENTS

PART I. COVERAGE UNDER THIS PERMIT

A. **Permit Area.** This permit covers all areas of the State of Maryland.

B. **Eligibility.**

1. This permit will cover all new and existing stormwater discharges that are composed in whole or in part of discharges associated with construction activity [as defined by 40 Code of Federal Regulations (40 CFR), Section 122.26 (b)(14)(x), (15); see Part VII, Definitions].

2. **Facilities with a permit for a different discharge.** Stormwater discharges associated with construction activity at facilities which have a permit for a discharge other than stormwater can be covered by this general permit, an alternative general permit, or, at the discretion of the Director, an existing individual permit may be amended to cover stormwater discharges associated with construction activities.

C. **Requiring an Individual Permit or an Alternative General Permit.**

1. The Director may require any person authorized by this permit to apply for and obtain either an individual permit or coverage under an alternative general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any person authorized to discharge under this permit to apply for an individual permit or obtain coverage under an alternative general permit only if that person has been notified in writing that such a change is required. This notice shall include:

(a) a brief statement of the reasons for this decision;
(b) a statement setting a deadline for the person to file an application for an individual permit or file a Notice of Intent (NOI) in accordance with the terms of the alternative general permit;
(c) a permit application if applicable; and
(d) a statement that on the effective date of the individual permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate.

The Director may grant additional time to submit the application or NOI upon request of the applicant. If the person so notified fails to submit in a timely manner an individual permit application or an NOI for coverage under an alternative general permit as required by the Director under this paragraph, then the individual permittee's coverage under this permit is automatically terminated at the end of the day specified in the Director's notification.

2. Any person authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit or filing an NOI for coverage under an alternative general permit. The person seeking an individual permit shall submit an individual application in accordance with the United States Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) regulations, with reasons supporting the request to the Director. The person seeking coverage under an alternative general permit shall file an NOI in accordance with the terms of the alternative general permit. A request for an individual permit shall be granted if the reasons cited by the applicant are adequate to support the request. If the applicant seeks coverage under an alternative general permit, the terms of that permit will determine whether coverage under the alternative general permit is obtained.

3. When an individual permit is issued to a person otherwise covered by this permit, the applicability of this permit to the individual permittee is automatically terminated on the effective date of the individual permit. Similarly, when a person subject to this permit obtains coverage under an alternative general permit, the applicability of this permit is terminated on the effective date of the alternative general permit. When an individual permit is denied to an applicant otherwise covered by this permit, or the applicant is denied coverage under the terms of an alternative general permit, the applicability of this general permit to the permittee may be terminated by MDE.

D. **Authorization.** A person planning construction activity must submit an NOI, at least 48 hours prior to any land disturbing activities, in accordance with the requirements of Part II of this permit to be authorized to discharge stormwater under this general permit. Unless notified by the Director to the contrary, persons who submit such notification are authorized to discharge stormwater associated with construction activity under the terms and conditions of this permit.

E. **Transfer of Authorization.**

1. **Transfer of control of permitted activities at the site.** A person submitting an NOI who does not intend to control the permitted activities on the site will transfer authorization under this permit, at least 48 hours prior to any land disturbing activities, to a duly authorized person who will control the permitted activities. The transfer shall become effective upon receipt by the Administration of a completed Transfer of Authorization form, signed by both the transferor and transferee. Should the permittee decide to transfer authorization under this permit during the construction period, written notification (as outlined above) must occur immediately.

2. **Transfer of property to a new owner.** A permittee may transfer coverage under this general permit to a new owner should ownership change during the construction period. The transfer shall become effective upon receipt by the Administration of a completed Transfer of Authorization form, signed by both the transferor and transferee.

3. **Obligations of the permittee.** The permittee ("transferor") must familiarize the person who is assuming control of the permitted activities ("transferee") or the new owner, in the case of an ownership change, with the program and provide the transferee/new owner with a copy of this general permit. All conditions and obligations outlined in this general permit will apply to the new permittee/owner upon transfer.

Part II. NOTICE OF INTENT REQUIREMENTS

A. **Deadlines for Notification.**

1. **For construction activity beginning on or after March 1, 2003.** Persons who intend to obtain coverage for a stormwater discharge associated with construction activity under this general permit shall submit an NOI in accordance with the requirements of this Part at least 48 hours prior to any land disturbing activities.

2. **For construction activity beginning prior to, and continuing past, March 1, 2003 and currently covered under permit 97-GP-0004.** Permittees whose projects are currently covered under 97-GP-0004 will remain covered for the area indicated on the initial NOI until the termination of the project. Any additional phase or phases of a multi-phased project not currently covered under the existing NOI can be added to the initial NOI by paying the additional fees associated with the activity.

3. Persons who obtain coverage under this general permit shall, prior to commencing construction, obtain approved erosion and sediment control plans in accordance with the requirements established in Title 4, Subtitle 1 of the Environment Article, Annotated Code of Maryland (Sediment Control); and in Code of Maryland Regulations (COMAR) 26.17.01 (Erosion and Sediment Control); and shall obtain approved stormwater management plans in accordance with the requirements established in Title 4, Subtitle 2 of the Environment Article, Annotated Code of Maryland (Stormwater Management); and in COMAR 26.17.02 (Stormwater Management).

B. **Application.** The applicant shall submit to the Administration an NOI to be covered under this general permit. The NOI will constitute application and must be accompanied by the appropriate fee required by the Administration and established in State regulations to be considered complete. A discharger may submit an NOI form in accordance with the requirements of this Part after the applicable deadline. In such instances, an enforcement action for any stormwater discharges associated with the construction activity occurring prior to notification may be taken.

C. **Failure to Notify.** Persons who disturb earth as part of a construction activity and fail to notify the Director of their intent to be covered by an NPDES stormwater discharge permit, and discharge pollutants to waters of the United States without a permit, are in violation of the Clean Water Act (CWA). Persons who disturb one acre or more of earth and fail to notify the Director of their intent to be covered, and discharge pollutants to waters of the State are in violation of Section 4-413 and 9-322 of the Environment Article, Annotated Code of Maryland.

D. **Contents of Applications.** As stated in Part II. B. above, an NOI to be covered under this general permit will constitute application. The NOI shall include, but not be limited to, the following:

1. The site's name, mailing address, and general location;

2. The site's latitude and longitude (to the nearest 15 seconds) and Maryland Grid Coordinates (approximate center of the site);

3. The permittee's name and signature, address, telephone number, and principal contact;

4. A brief project description, including existing and proposed land uses;

5. Standard Industrial Classification (SIC);

6. The name of the eventual receiving waters (if the discharge is to a municipal separate storm sewer system, the name of the municipal system and the receiving waters shall be supplied);

7. The total site area, the total proposed disturbed area, the type(s) of stormwater management best management practice(s) (BMP) proposed, and the total drainage area to be controlled by each type of BMP; and

8. Permit number of any other NPDES Permit.

E. **Fees.** A one-time application fee is required with the initial submission of the NOI form. The fee schedule is based on the size of the total planned disturbance. The applicant should determine the appropriate fee to be paid from the fee schedule found on the NOI.

F. **Where to Submit.** Persons intending to discharge stormwater associated with construction activity must submit erosion and sediment control and stormwater management plans in accordance with procedures established in, and to the approving authorities identified in, the laws and regulations cited in Part II. A. of this general permit. Applications (NOIs) to be covered by this general permit shall be mailed, to the Administration at the following address:

The Maryland Department of the Environment
Water Management Administration
P.O. Box 2057
Baltimore, Maryland 21203-2057

G. **Effective Date of Coverage.** Coverage under this general permit is effective upon receipt by the Administration of a completed application as outlined in Part II. D. above. The completed application (NOI form) must be accompanied by the appropriate application fee as outlined in Maryland regulations and in Part II. E above. The effective date for Transfer of Authorization shall be in accordance with Part I. E. Coverage under this general permit will expire 5 years from the date coverage is issued to the project or until a Notice of Termination form has been completed and received by MDE. If a permittee elects to continue coverage beyond the 5 year period a Notice of Continuation of Coverage must be completed and received by MDE prior to the coverage expiration date.

H. **Notice of Termination.** Where a site has been finally stabilized and all stormwater discharges from construction sites that are authorized by this permit are eliminated, the authorized permittee of the facility must submit a Notice of Termination form.

1. The Notice of Termination shall include, but not be limited to, the following:

   (a) the mailing address and location of the construction site for which notification is submitted. Where a mailing address is not available, the location can be described in terms of the latitude and longitude (to the nearest 15 seconds) and Maryland Grid Coordinates of the approximate center of the facility;
   (b) the permittee's name, address, and telephone number;
   (c) the name, address, and telephone number of the general contractor(s);
   (d) the NOI identification number; and
   (e) the following certification statement:

"I certify under penalty of law that disturbed soils at the identified site have been acceptably stabilized and temporary erosion and sediment controls have been removed or will be removed at an appropriate time and that all stormwater discharges associated with construction activity from this site that are authorized by this general permit have been eliminated. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge stormwater associated with construction activity by the general permit and that discharging pollutants in stormwater associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submittal of this Notice of Termination does not release the permittee from liability for any violations of this permit or the Clean Water Act which may have occurred at this site."

2. Notice of Termination forms will be available at local plan review offices. The completed Notice of Termination form should be sent to the Maryland Department of the Environment, Water Management Administration.

Part III. SPECIAL CONDITIONS

A. **Prohibition on Non-Stormwater Discharges.** All discharges covered by this permit shall be composed entirely of stormwater, except as provided in Part III. A.1. and Part III. A.2. Discharge of material other than stormwater must be in accordance with erosion and sediment control and stormwater management plans approved in accordance with the laws and regulations cited in Part II. A. above.

1. Discharges of material other than stormwater must be in compliance with an NPDES permit (other than this permit) issued for the discharge.

2. The following non-stormwater discharges may be authorized by this permit provided the non-stormwater component is a discharge from: fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust (provided this water usage is not excessive); irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. **Other Requirements for Erosion and Sediment Control and Stormwater Management Plans.**

1. All plans for construction activity and any reports prepared pursuant to this permit shall be available to the public under Section 308(b) of the CWA. Upon request by the public, the permittee or person covered by this general permit shall make such documents available. However, the permittee may claim any portion of these documents as confidential in accordance with 40 Code of Federal Regulations (CFR) Part 2.

2. **Releases in excess of Reportable Quantities**. In the unlikely event of a discharge of hazardous substances or oil in the stormwater discharge(s) from a construction site, such discharge shall be minimized in accordance with the approved erosion and sediment control and stormwater management plans. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under either 40 CFR 110, 40 CFR 117, or 40 CFR 302, occurs during a 24 hour period:

(a) any person in charge of the construction site is required to notify the National Response Center (NRC) at 1-800-424-8802 or 202-267-2675 (in the Washington, DC metropolitan area), in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 as soon as he or she has knowledge of the discharge;
(b) additionally, the Maryland Department of the Environment must be notified between 8AM - 5PM at 410-537-3510, after hours at 410-537-3937;
(c) the permittee shall submit within 7 calendar days of knowledge of the release an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with a written description of the circumstances leading to the release, the nature of the release, and steps to be taken. This application should be sent to the Maryland Department of the Environment, Water Management Administration;
(d) the permittee shall, within 14 days of knowledge of the release, modify the existing erosion and sediment control and stormwater management plans to identify and provide for the implementation of steps to prevent and control similar releases in the future.

3. Discharges of hazardous substances and oil resulting from on-site spills are not authorized by this permit.

4. No condition of this general permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

Part IV. EFFLUENT LIMITATIONS, MONITORING, RECORDS, AND REPORTING REQUIREMENTS

A. **Effluent Limitations.** The Maryland Department of the Environment has not established specific effluent limitations for stormwater discharges associated with construction activity. Therefore, this general permit establishes effluent limitations in terms of performance standards associated with the Best Available Technology (BAT) for erosion and sediment control and stormwater management. Compliance with the BAT associated with the laws and regulations cited in Part II. A. of this general permit will constitute compliance with effluent limitations for stormwater discharges associated with construction activity.

B. **Monitoring and Records.** For the purposes of monitoring, permittees must do all of the following:

1. During construction, maintain at the site the approved erosion and sediment control plan.

2. Conduct the following inspections:

   (a) weekly inspections of implemented erosion and sediment controls; and
   (b) inspections of erosion and sediment controls the next business day after a rainfall event resulting in runoff.

3. During construction, maintain at the site written reports of all inspections conducted by the permittee that include:

   (a) the date and time of the inspection;
   (b) the name(s) of the individual(s) who performed the inspection;
   (c) an assessment of the condition of erosion and sediment controls;
   (d) a description of any erosion and sediment control implementation and maintenance performed; and
   (e) a description of the site's present phase of construction.

3. Maintain all inspection reports and enforcement actions issued to the permittee by the appropriate enforcement authority.

4. Permittees must retain the records described in Part IV. B. 1., 3., and 4., and records of all data used to complete the NOI to be covered by this permit for a period of three (3) years from the date that the site is finally stabilized.

C. **Reporting Requirements.** Reporting requirements for the purposes of this general permit will involve submitting, upon request by MDE, the information maintained in accordance with Part IV. B. to:

The Maryland Department of the Environment
Water Management Administration
Compliance Program
1800 Washington Boulevard, Ste 420
Baltimore, Maryland 21230-1708

Part V. STANDARD PERMIT CONDITIONS

A. **Duty to Comply.** It is a condition of this permit that the permittee comply with erosion and sediment control and stormwater management plans approved in accordance with the laws and regulations cited in Part II. A.3. above, and with all conditions of this general permit. Violations of plans for construction activity constitute violations of this permit, State law, and the CWA. Violations of this permit are grounds for enforcement action; for permit termination, revocation, reissuance, or modification; or for denial of a permit renewal.

B. **Continuation of Coverage Under This General Permit.** Once construction has commenced, it is a condition of this permit that erosion and sediment control and stormwater management plan approvals be kept in effect. Construction activity may not continue if these plans have expired, but may resume once plans are renewed without payment of an additional fee.

C. **Continuation of the Expired General Permit.** An expired general permit continues in force and effect until a new general permit is issued. Only those permittees authorized to discharge under the expiring general permit are covered by the continued permit.

D. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

E. **Duty to Mitigate.** The permittee shall take all reasonable steps to minimize the environmental impact caused by any discharge allowed by this general permit.

F. **Proper Operation and Maintenance.** The permittee shall at all times properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance requires the installation and operation of backup, auxiliary, or similar systems or controls, by a permittee when necessary to achieve compliance with the conditions of the permit.

G. **Duty to Provide Information.** The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit, State law, or the CWA.

H. **Other Information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in plans approved in accordance with the laws and regulations cited in Part II. A., he or she shall promptly submit such facts or information to the Director or the appropriate plan review authority.

I. **Certification.** Any person signing documents under this section shall provide certification in accordance with the laws and regulations identified in Part IV. J below.

J. **Signatory Requirements.** All submissions of reports, certifications or information shall be signed in accordance with requirements established in Title 4, Subtitle 1 of the Environment Article, Annotated Code of Maryland (Sediment Control); COMAR 26.17.01 (Erosion and Sediment Control); Title 4, Subtitle 2 of the Environment Article, Annotated Code of Maryland (Stormwater Management); and COMAR 26.17.02 (Stormwater Management). All Notices of Intent shall be signed as follows:

1. For a corporation: by a responsible corporate officer;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

3. For a municipality, State, federal, or other public agency: by either a principal executive officer or a duly authorized official.

K. **Liabilities Under Other Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, any applicable State law, or regulation under authority preserved by section 510 of the CWA.

L. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

M. **Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

N. **Transfers.** This permit is not transferable to any person except after notice to the Director in accordance with Part I. E. above. The Director may require separate application for an individual permit as stated in Part I. C.

O. **Inspection and Entry.** The permittee shall allow the Director or an authorized representative of EPA or the State who is assigned responsibilities in the laws and regulations cited in Part II. A., upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and obtain copies at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times, without prior notice, any construction site, facility, or equipment (including monitoring and control equipment).

P. **Criminal Penalties for Falsification of Reports.** Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000.00, or by imprisonment for not more than 2 years, or by both. Section 9-343(b) of the Environment Article, Annotated Code of Maryland, provides for a fine, upon conviction, of $10,000.00 or imprisonment for not more than 6 months.

Q. **Criminal Penalties for Falsification of Monitoring Systems.** The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the CWA. Section 9-343(b) of the Environment Article, Annotated Code of Maryland, provides for a fine, upon conviction, of $10,000.00 or imprisonment for not more than 6 months.

R. **Criminal Penalties for Violations of Permit Conditions.** In addition to the criminal penalties established in Title 4, Subtitles 1 and 4, and in Title 9, Part V. of the Environment Article, any person who violates any condition of this permit is subject to the following criminal penalties under the CWA:

1. Negligent Violations: The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both;

2. Knowing Violations: The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or both;

3. Knowing Endangerment: The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

S. **Civil Penalties for Violations of Permit Conditions.** In addition to the civil penalties established in Title 4, Subtitles 1 and 4, and in Title 9, Part V. of the Environment Article, any person who violates any condition of this permit is subject to a civil penalty not to exceed $25,000.00 per day of such violation, as well as any other appropriate sanction provided by section 309 of the CWA.

T. **Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation, reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VI. REOPENER CLAUSE

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge associated with construction activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative general permit coverage in accordance with Part I. C. of this permit or the permit may be modified to include different limitations and requirements. Permit modification or revocation will be conducted according to COMAR 26.08.04.10.

Part VII. Authority to Issue General NPDES Permits

On September 5, 1974, the Administrator of the EPA approved the proposal submitted by the State of Maryland for the operation of a permit program for discharges into navigable waters under Section 402 of the federal Clean Water Act, 33 U.S.C. Section 1342.

On September 30, 1990, the Administrator of the EPA approved the proposal submitted by the State of Maryland for the operation of a general permit program.

Under the approvals described above, this general discharge permit is both a State of Maryland general discharge permit and an NPDES general discharge permit.

_____

Robert M. Summers, Director
Water Management Administration

Part VIII. DEFINITIONS

"Administration" means The Maryland Department of the Environment, Water Management Administration.

"Construction Activity" means clearing, grading and excavating activities that results in a land disturbance equal to or greater than one acre, including the disturbance of less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb more than one acre.

"CWA" means Clean Water Act or the Federal Water Pollution Control Act or the Amendments to the Clean Water Act.

"Director" means the Regional Administrator, the Secretary of the Maryland Department of the Environment, or an authorized representative.

"Larger common plan of development or sale" means an area where multiple separate and distinct construction activities are occurring under one plan. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating that construction activities may occur on a specific plot.

"Person" is as defined in COMAR 26.17.01 (Erosion and Sediment Control) and COMAR 26.17.02 (Stormwater Management).

"Project" means the total area upon which construction activity will occur through stages or phases over time.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater Associated with Construction Activity" means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to clearing, grading, and excavation activities.

MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

GENERAL PERMIT FOR CONSTRUCTION ACTIVITY
FACT SHEET

What is the General Permit?

The General Permit for Construction Activity authorizes stormwater discharges from construction sites in accordance with the United States Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) regulations. Coverage under the General Permit mandates compliance with the terms stated in the General Permit and compliance with the General Permit shall be considered compliance with EPA regulations.

Who is Covered by the General Permit?

It is intended that the General Permit cover construction activity in Maryland with a planned total disturbance of 1 acre or more. This includes phased/staged construction projects, even if individual phases will disturb less than 1 acre. Current Maryland law requiring approved erosion and sediment control and stormwater management plans for earth disturbances exceeding 5,000 square feet remains unchanged.

The permittee who applies for coverage under the terms of the General Permit shall be held accountable for complying with all of the terms of the General Permit. A person who has submitted a Notice of Intent (NOI) and does not intend to be responsible for controlling the permitted activities on site must transfer authorization under the General Permit to a duly authorized person. Upon transfer, this duly authorized person shall be held accountable for compliance under the terms stated in the General Permit.

How is Coverage Obtained?

Coverage under the General Permit is obtained by filing a completed Notice of Intent (NOI) form with the Maryland Department of the Environment, Water Management Administration (MDE/WMA). The completed NOI form is considered a formal application for coverage and intent to comply with the terms of the General Permit.

What is the Procedure for Application?

For construction activity with a planned total disturbance of one acre or more, General Permit coverage is required. Permittees are encouraged to submit only one NOI for the entire project, including all phases or stages of development. NOI forms are available at local plan review offices and at MDE. NOI forms must be complete and include the signature of the permittee in order to be processed. Completed NOI forms must be submitted with the appropriate application fee (see below) to the Maryland Department of the Environment, Water Management Administration, P.O. Box 2057, Baltimore, Maryland, 21203-2057.

We will acknowledge coverage under the General Permit by issuing an authorization letter and green card to the permittee to be posed at the site. The coverage under the permit is valid for a 5 year period (5 years from the date the NOI was issued). A "Continuation of Coverage" form is to be completed when a construction activity covered under the General Permit for Construction Activity will extend beyond the five year permit period. Once the construction activity is completed, including final stabilization and the elimination of all stormwater discharges authorized by the General Permit, the permittee must submit a "Notice of Termination" form to MDE, Water Management Administration. Forms are available at local plan review offices and at MDE.

(over)

The application fee schedule for Private projects is as follows:

Total Disturbed Area (acres)	NOI Fee (dollars)
1 to less than 10	$100
10 to less than 15	$500
15 to less than 20	$1,500
20 and up	$2,500

Local/Municipal projects are exempt from the application fee.

What Information is Required on the NOI Form?

Information required on the NOI form is general information describing the construction activity. Much of this information can be provided directly by the permittee from prepared site plans and any other necessary information should be available at the local plan review offices. The component parts of the NOI form are outlined below:

I. Site Name and Location including name and general location of the site; MD Grid Coordinates; Latitude and Longitude; Watershed Basin Code;

II. Project Description including stormwater management BMPs to be implemented and drainage area for each type of BMP; brief project description; total site area; total site disturbed area; runoff curve numbers; estimate of total impervious surface area; the project type (County/Municipal or Private) and its eventual use (Residential, Commercial, Industrial or Other (describe)); Standard Industrial Classification (SIC) code; any other NPDES permit number; name of eventual receiving waters or storm sewer system receiving the site's runoff;

III. Permittee Identification including name/company, address, and Federal Tax ID number of permittee and name and phone number of the principal contact person for the site;

IV Certification including a certification statement to be signed by the permittee to include:
For a corporation: by a responsible corporate officer;
For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
For a municipality or other public agency: by either a principal executive officer or a duly authorized official;

V. Fee amount to be paid with the NOI submission.

When Must the NOI Form be Submitted?

The completed NOI must be submitted to the Water Management Administration at least 48 hours prior to the commencement of construction activities. This is applicable to all construction activity with a planned total disturbance of 1 acre or more. The application fee is due at the time of NOI submission. Checks and money orders only will be accepted and should be made payable to MDE.

MDE has supplied local plan review offices with NOI forms. Forms and information may also be obtained at MDE/WMA. It is the responsibility of the permittee to accurately complete the form and submit it to MDE/WMA.

Further assistance can be obtained by contacting:

MDE/WMA, Compliance Program, (410) 537-3525

NOTICE OF INTENT

to Comply With the General Permit for Construction Activity for Stormwater Discharges

FOR PRIVATE AND LOCAL/MUNICIPAL PROJECTS ONLY

Maryland Department of the Environment
P.O. Box 2057
Baltimore, MD 21203-2057
(410) 537-3510

BACKGROUND INFORMATION

The United States Environmental Protection Agency (EPA) has developed the National Pollutant Dischorge Elimination System (NPDES) stormwater program to control pollutants entering the nation's surface waters from many industrial activities. EPA has authorized the Maryland Department of the Environment (MDE) to implement the NPDES stormwater program in Maryland. MDE has developed a **General Permit** intended to cover stormwater discharges fram construction activity. This **Notice of Intent (NOI)** is an application form, designed to notify MDE of the permittee's intent to be covered by the General Permit for Construction Activity. **This NOI form must be completed and submitted to MDE for any construction activity that results in an earth disturbance of one acre or more. However, if a single owner/developer is engaged in a multiple phase construction project having a planned total disturbance of one acre or more, an NOI is required for General Permit coverage, even if the phase will disturb less than one acre.**

GENERAL INSTRUCTIONS

- Do not bend or fold the Notice of Intent form.
- Use a No. 2 pencil to fill appropriate ovals under each item.
- Sign and date the completed NOI form in ink.
- Please retain a copy of the completed NOI for your records.
- Mail signed form to: MDE, P.O. Box 2057, Boltimore, MD, 21203-2057.
- Additional information regarding the completion of this form can be obtained from local plan review offices or by calling MDE at (410) 537-3510.
- MDE will verify receipt of the NOI by sending the permittee or principal contact a letter, a copy of the General Permit and a receipt card.
- This NOI form does not relieve the permittee of his/her responsibility under current Maryland law regarding erosion and sediment control and stormwater management plan approvals. Appropriate plan approvals must still be obtained.
- State and Local government projects are exempt from the application fee.
- Enclose a check or money order made payable to MDE for amount corresponding to the acreage listed below on the fee schedule.

FEE SCHEDULE FOR PRIVATE PROJECTS		
	1 to less than 10 acres	$ 100
	10 to less than 15 acres	$ 500
	15 to less than 20 acres	$ 1,500
	20 acres and up	$ 2,500

COUNTY: Indicate county/city where project is located.

○ Allegany	○ Charles	○ Prince George's
○ Anne Arundel	○ Dorchester	○ Queen Anne's
○ Baltimore	○ Frederick	○ St. Mary's
○ Baltimore City	○ Garrett	○ Somerset
○ Calvert	○ Harford	○ Talbot
○ Caroline	○ Howard	○ Washington
○ Carroll	○ Kent	○ Wicomico
○ Cecil	○ Montgomery	○ Worcester

SITE NAME

PHASE (if applicable)

SITE LOCATION: Be as specific as possible; be sure to include city/town and zip.

30156

MDE 311 (3/03) Mark Reflex® forms by NCS Pearson EM-151652-3:6543
HR06 Printed in U.S.A.

MD GRID COORDINATES

Use the approximate center of the site. This information may be found on site plans, ADC county map, or by contacting MDE. Coordinates are based on 1927 origin.

N E

LATITUDE AND LONGITUDE

Refer to ADC county map. Round to the nearest 15 seconds.

Latitude Longitude

WATERSHED BASIN CODE

Six digit number that indicates the site's watershed. This information may be obtained at local plan review offices or MDE.

Watershed Basin Code

II PROJECT DESCRIPTION

PERMANENT STORMWATER MANAGEMENT FACILITIES (BMPs)

Use the left hand column to indicate how many of each type of permanent SWM facility will be implemented. Indicate the total drainage area for these facilities in the remaining columns. Example: if two extended detention ponds are installed, each draining 10 acres, indicate the number of ponds (2) in the left-hand column, and the total drainage area for that type of facility (20.0 acres).

- ◯ SWM Waived
- ◯ SWM Exempt

	INFILTRATION TRENCHES	INFILTRATION BASINS	OFFSITE SWM FACILITY

	RETENTION PONDS	DETENTION PONDS	EXTENDED DETENTION POND - WET	EXTENDED DETENTION POND - DRY

	VEGETATED SWALES	WETLAND/ SHALLOW MARSHES	OIL/GRIT SEPARATORS	DRYWELLS

BRIEFLY DESCRIBE PROJECT

(include existing and proposed land uses)

OTHER NPDES NUMBER

If this project/site has an NPDES number for a discharge other than for stormwater from construction, please indicate that number below:

TOTAL SITE AREA

(in acres)

TOTAL DISTURBED AREA

(in acres)

STANDARD INDUSTRIAL CLASSIFICATION

Indicate the appropriate SIC number that best represents the eventual use of the facility under construction. For residential and commercial facilities (i.e., non-industrial), use the appropriate construction SIC number. SIC information may be obtained at local plan review offices, public libraries, or by contacting MDE.

(SIC code)

RUNOFF CURVE NUMBER

PRE POST

ESTIMATE OF IMPERVIOUS SURFACE AREA

(Post development in acres; includes rooftops, parking lots, etc.)

THE RUNOFF FROM THIS SITE GOES TO:

(mark one and describe)

- ◯ a municipal separate storm sewer system. Give name of that system and its receiving waters:
- ◯ surface waters. Give name of receiving waters (use the closest named waterway):

THIS PROJECT IS

(choose one)

- ◯ County/Municipal
- ◯ Private

PROJECT TYPE

- ◯ Residential
- ◯ Commercial
- ◯ Industrial
- ◯ Other (describe):

III PERMITTEE IDENTIFICATION

Give name of individual or company applying for permit coverage (fill in the appropriate oval indicating whether individual or company).

The permittee will be responsible for complying with the General Permit, unless and until he or she officially transfers or terminates this authority. Refer to the General Permit for specifics.

PERMITTEE IS:

- ◯ Individual ◯ Company
- ◯ Mr.
- ◯ Ms.

FEDERAL TAX ID #

		–							
0	0		0	0	0	0	0	0	0
1	1		1	1	1	1	1	1	1
2	2		2	2	2	2	2	2	2
3	3		3	3	3	3	3	3	3
4	4		4	4	4	4	4	4	4
5	5		5	5	5	5	5	5	5
6	6		6	6	6	6	6	6	6
7	7		7	7	7	7	7	7	7
8	8		8	8	8	8	8	8	8
9	9		9	9	9	9	9	9	9

PERMITTEE NAME

Example: John Smith or XYZ Company

PERMITTEE STREET ADDRESS

Street Number and Name (Use standard abbreviations where possible)

TOWN/CITY

STATE

ZIP CODE + 4

PHONE NUMBER OF PRINCIPAL CONTACT

Area Code | Number

( ) Mr. ( ) Ms. PRINCIPAL CONTACT

Last Name | First Name | MI

IV CERTIFICATION

Please read the certification statement below and sign and date.

I certify under penalty of law that this document was completed under my supervision and that the information contained herein is accurate and truthful to the best of my knowledge. I understand that I will be held accountable under the terms specified in the General Permit unless and until I officially transfer or terminate permit authority as outlined in the General Permit.

PRINT NAME

Signature of Permittee

Date

V FEE

A one-time application fee based on total planned disturbance is required with the initial submission of the NOI form. Use the fee schedule below to determine check or money order amount. If multiple NOIs are received for stages or phases of the same project, the Department will require that the fees included with those NOIs be equal to the fee which would be paid if a single NOI were submitted for the total project. Coverage under the general permit will be denied if the correct fee is not provided. State and Local/Municipal projects are exempt.

FEE SCHEDULE

1 to less than 10 acres	$ 100
10 to less than 15 acres	$ 500
15 to less than 20 acres	$ 1,500
20 acres and up	$ 2,500

AMOUNT ENCLOSED

$

To assure timely processing of your NOI form please answer the following questions:

Is this a revised NOI form? ( ) Yes ( ) No

If yes, please indicate previously assigned number here: _____

Is this a phased project? ( ) Yes ( ) No

If yes, and a phase of this project has been assigned a number, please indicate site/phase nome, assigned number and amount previously paid here:

Site/phase name: _____

Site assigned number: _____

Previously paid amount: $ _____

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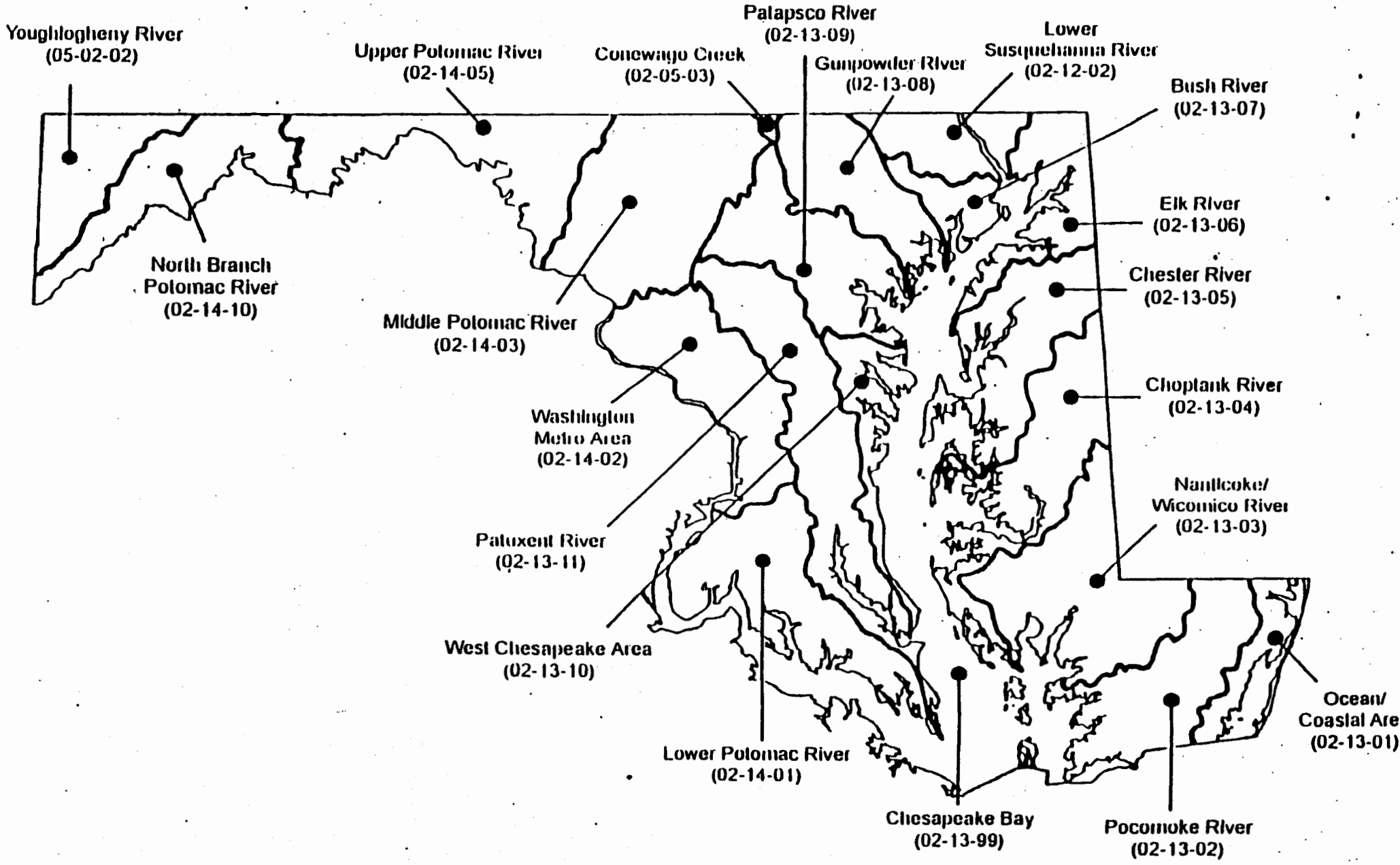
C. CONSTRUCTION

Code	Short Title
15	GENERAL BUILDING CONTRACTORS
1521	Single-family Housing Construction
1522	Residential Construction
2332	Condominium Construction
2332	Townhouse Construction
6233	Assisted Living Facilities
1531	Operative Builders
154	Nonresidential Building Construction
2333	Commercial Building Construction
4451	Convenience Stores
4529	General Merchandise Store
2333	Shopping Center & Mall Construction
1541	Industrial Buildings and Warehouses
6111	Elementary Schools and Secondary Schools
16	HEAVY CONSTRUCTION EX BUILDING
1611	Highway and Street Construction
1622	Bridge, tunnel & elevated highway
1623	Water, sewer and utility lines
1629	Heavy construction except highway
1791	Structural steel erection
1794	Excavation work
1795	Wrecking and demolition work
5629	Environmental Remediation Services

Maryland Watershed Basin Codes



MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard, Suite 420, Baltimore, MD 21230-1780
(410) 537-3000 • http://www.mde.state.md.us

NOTICE OF CONTINUATION OF COVERAGE

This Notice of Continuation of Coverage form is to be completed when a construction activity covered under the General Permit for Construction Activity will extend beyond the five year permit period (5 years from the date the Notice of Intent (NOI) was issued). Prior to the expiration date, the permittee should complete and sign this form and submit to the Maryland Department of the Environment, WMA - Compliance Program, Montgomery Park Business Center, 1800 Washington Boulevard, STE 420, Baltimore, Maryland 21230-1780.

Date:_____ NOI Identification Number: _____

Type of Project: _____ Federal _____ State _____ Local _____ Private _____

Name of Permittee:_____

Address of Permittee: _____

Site Location (description, including County and mailing address if available): _____

_____

Name of Principal Contact: _____ Phone: _____

Address of Principal Contact: _____

_____
(signature of permittee)

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard ● Baltimore Maryland 21230
(410) 537-3000 ● 1-800-633-6101 ● http://www.mde.state.md.us

TRANSFER OF AUTHORIZATION

This Transfer of Authorization form is to be completed by a permittee who has applied for coverage under the General Permit for Construction Activity, in accordance with the Environmental Protection Agency's National Pollutant Discharge Elimination System stormwater program, if the permittee intends that another person assume control of permitted activities on the site or if the site's ownership changes. In this event, the permittee (the "transferor") must familiarize the person who is assuming control of the permitted activities (the "transferee") with the program and provide the transferee with a copy of the General Permit. The transferor and transferee must both sign this form. The completed forms should be submitted by the transferor to the Maryland Department of the Environment, WMA - Compliance Program, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 420, Baltimore, Maryland, 21230.

NOI Identification Number (if assigned): _____

Name of Transferor/Permittee: _____

Address of Transferor/Permittee: _____

_____

Site Name and Location (description, including County and mailing address if available): _____

_____

_____

Name of Person to Whom Coverage is Being Transferred (i.e., Transferee): _____

_____

Address of Person to Whom Coverage is Being Transferred: _____

_____

Phone Number of Person to Whom Coverage is Being Transferred: _____

Name and Phone Number of Contact Person: _____

I acknowledge this transfer of authorization under the terms of the General Permit. I understand that the named transferee on this form is now responsible for complying with the terms of the General Permit.

_____ Transferor Signature and Date

_____ Transferee Signature and Date

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER MANAGEMENT

EROSION AND SEDIMENT POLLUTION CONTROL PROGRAM MANUAL

April 15, 2000

BUREAU OF WATERSHED MANAGEMENT
DIVISION OF WATERWAYS, WETLANDS AND EROSION CONTROL

An Equal Opportunity Employer

3930-PM-WM0280 12/2002

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

APPROVAL OF COVERAGE UNDER THE GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES PAG-2 (2002 Amendment)

NPDES PERMIT NO: PAG-2

Project Name & Address

Permittee Name & Address

In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 et seq. ("the Act") and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 et seq., the Department of Environmental Protection hereby approves the Notice of Intent (NOI) submitted for coverage to discharge stormwater to the following surface water(s)

from a ☐ 1 to less than 5 acre project with a point source discharge ☐ 5 acres or larger project

subject to the Department's enclosed PAG-2 which incorporates all effluent limitations, monitoring and reporting requirements and other terms, conditions, criteria and special requirements for the discharge of stormwater from point sources composed entirely of stormwater associated, in whole or in part, with construction activity, as defined in this general permit, to surface waters of the Commonwealth, including to municipal separate storm sewers and non-municipal separate storm sewer.

APPROVAL TO DISCHARGE IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREIN MAY COMMENCE ON THE DATE OF THE APPROVAL OF COVERAGE, AND IS VALID FOR A PERIOD OF FIVE YEARS WHEN CONDUCTED PURSUANT TO SUCH TERMS AND CONDITIONS. COVERAGE MAY BE EXTENDED BY THE DEPARTMENT IF A TIMELY ADMINISTRATIVELY COMPLETE AND ACCEPTABLE NOI RENEWAL IS SUBMITTED TO THE DEPARTMENT AT LEAST 90 DAYS PRIOR TO DATE OF COVERAGE TERMINATION, UNLESS PERMISSION FOR SUBMISSION AT A LATER DATE HAS BEEN GRANTED BY THE DEPARTMENT. THE PERMIT MAY BE TERMINATED PRIOR TO THE EXPIRATION DATE UPON NOTICE TO AND APPROVAL BY THE DEPARTMENT OR AUTHORIZED COUNTY CONSERVATION DISTRICT. NO CONDITION OF THIS PERMIT SHALL RELEASE THE PERMITTEE OR CO-PERMITTEE FROM ANY RESPONSIBILITY OR REQUIREMENT UNDER PENNSYLVANIA, OR FEDERAL ENVIRONMENTAL STATUTES, AND REGULATIONS OR LOCAL ORDINANCES.

COVERAGE APPROVAL DATE: _____ COVERAGE EXPIRATION DATE: _____

AUTHORIZED BY: _____ TITLE: _____

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

GENERAL NPDES
PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

PAG-2 (2002 Amendment)

This permit applies to earth disturbance activities, other than agricultural plowing and tilling, timber harvesting activities and road maintenance activities, that disturb five (5) or more acres, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves five (5) or more acres of earth disturbance, AND, earth disturbance activities with a point source discharging to surface waters of the Commonwealth that disturb from one (1) to less than five (5) acres, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves one (1) to less than five (5) acres of disturbance.

Notice of Intent (NOI) Submittal

1. GENERAL INFORMATION AND REQUIREMENTS

   a. Persons proposing to discharge stormwater associated with construction activities and eligible persons proposing to expand the scope of previously authorized construction activity which discharges stormwater, who wish to be covered by this general permit, must submit an administratively complete and acceptable Notice of Intent (NOI) to the Department or authorized County Conservation District at least 30 days prior to commencing the construction activity. The NOI shall be filed in accordance with the detailed instructions specified in the NOI instruction package.

   b. The Department or authorized County Conservation District may notify the permittee at any time that the activities pursuant to this permit are not being met. Upon plan review or site inspection the Department or authorized County Conservation District may require E & S Plan revisions or other appropriate action to ensure compliance with the conditions of this permit.

   c. Operators of all construction activities shall develop, implement, and maintain erosion and sediment and post construction stormwater best management practices (BMPs) and other pollution prevention measures required by this permit.

   d. Erosion and sediment control BMPs shall be designed and implemented to meet the standards and specifications identified in Chapters 91-105, any other applicable laws and regulations, and in the Department's Erosion and Sediment Pollution Control Manual, No. 363-2134-008, as amended and updated, or an approved alternative, when legally authorized.

   e. The Erosion and Sediment Control Plan (E&S Plan), Post Construction Stormwater Management Plan (PCSM Plan), and Preparedness, Prevention, and Contingency Plan (PPC Plan) shall identify appropriate BMPs that will be implemented to ensure that existing and designated uses of surface water are protected and maintained.

   f. The permittee or co-permittee shall have the E&S Plan, PPC Plan, PCSM Plan, and other documents required by this permit available at the site and available for review by the Department, Conservation District or other authorized local, state, or federal government official.

2. The following activities are not eligible for coverage under this permit:

   a. Discharges to waters with a designated or existing use of High Quality or Exceptional Value pursuant to 25 Pa. Code Chapter 93;

   b. Discharges which contain hazardous pollutants, toxics, or any other substance which - because of its quantity, concentration, or physical, chemical, or infectious characteristics - may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into surface waters of the Commonwealth;

   c. Discharges which individually or cumulatively have the potential to cause significant adverse environmental impact;

d. Discharges to waters for which NPDES general permit coverage is prohibited under 25 Pa. Code Chapter 92;

e. Discharges which are not, or will not be in compliance with any of the terms or conditions of this general permit;

f. Discharges from a person who has failed and continues to fail to comply has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department.

g. Discharges subject to categorical point source effluent limitations promulgated by EPA;

h. Discharges which do not, or will not, result in compliance with applicable effluent limitations or water quality standards;

i. Discharges from construction activities for which the Department requires an Individual NPDES permit to ensure compliance with the Clean Water Act, the Clean Streams Law, or rules and regulations promulgated thereto; or where a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

j. Discharges associated with coal mining or non-coal mining activities pursuant to the Department's regulations at 25 Pa. Code Chapters 77 and 86-90.

k. Discharges associated with a construction activity that may adversely affect a Pennsylvania or federal endangered or threatened species or its habitat;

l. Discharges from a site where other point source(s) require the issuance of an Individual NPDES permit.

3. The Department, or the authorized County Conservation District may require by written notice any person authorized by this permit to apply for an Individual NPDES permit. This notice shall include the following: (1) a brief statement of the reasons for the decision, (2) an application form for an Individual NPDES permit, and (3) a statement setting a 90 day deadline for the owner or operator to file the application.

4. Persons requesting a renewal of coverage under this general permit must submit to the Department or authorized County Conservation District an administratively complete and acceptable NOI, at least 90 days prior to the expiration date of the coverage, unless permission has been granted by the Department or authorized County Conservation District for submission at a later date. In the event that a timely, administratively complete, and acceptable application for renewal of coverage has been submitted and the Department or authorized County Conservation District is unable, through no fault of the permittee, to reissue the approval for coverage before the expiration date of the approved coverage, the terms and conditions of the approved coverage will be automatically continued and will remain fully effective and enforceable pending the issuance or denial of the renewal of coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit.

5. No condition of this permit shall release any person from any responsibility or requirements under other federal or Pennsylvania environmental statutes or regulations or local ordinances.

The General NPDES Permit for Stormwater Discharges Associated with Construction Activities PAG-2 is issued December 7, 2002 and shall expire at midnight December 7, 2007 unless reissued on or before this date by the Department.

BY _____

STUART I. GANSELL
DIRECTOR
BUREAU OF WATERSHED MANAGEMENT

PART A

EFFLUENT LIMITATIONS, MONITORING AND REPORTING REQUIREMENTS

1. EFFLUENT LIMITATIONS

a. Best Management Practices (BMPs)

This permit establishes effluent limitations in the form of implemented BMPs identified in PPC Plans, PCSM Plans, and E&S Plans which restrict the rates and quantities of sediment, stormwater runoff and associated pollutants from being discharged into surface waters of the Commonwealth and which replicate preconstruction infiltration and runoff conditions to the maximum extent possible.

b. Applicable Effluent Limitations

All stormwater discharges associated with construction activities must comply with applicable effluent limitations established in 25 Pa. Code Chapters 91-105.

c. Water Quality Based Effluent Limitations

Water quality based effluent limitations shall be imposed under applicable state and federal law when necessary to ensure that the water quality standards of the receiving water are attained. Discharges of stormwater associated with a construction activity shall not result in a violation of the water quality standards.

2. MONITORING AND REPORTING REQUIREMENTS

a. Visual Inspections

The permittee and co-permittee must ensure that visual site inspections are conducted weekly, and after each measurable precipitation event by qualified personnel, trained and experienced in erosion and sediment control, to ascertain that the Erosion and Sediment Control (E&S) BMPs are operational and effective in preventing pollution to the waters of the Commonwealth. A written report of each inspection shall be kept, and include:

(1) a summary of site conditions, E&S BMP's, and compliance; and

(2) the date, time, and the name of the person conducting the inspection.

b. Non-compliance Reporting

Where E&S BMP's are found to be inoperative or ineffective during an inspection, or any other time, the permittee and co-permittee shall immediately contact the Department or authorized County Conservation District, by phone or personal contact, followed by the submission of a written report within 5 days of the initial contact. Non-compliance reports shall include the following information:

(1) any condition on the project site which may endanger public health, safety, or the environment, or involve incidents which cause or threaten pollution;

(2) the period of non-compliance, including exact dates and times and/or anticipated time when the activity will return to compliance;

(3) steps being taken to reduce, eliminate, and prevent recurrence of the non-compliance; and

(4) the date or schedule of dates, and identifying remedies for correcting non-compliance conditions.

c. Supplemental Monitoring

The Department, and authorized County Conservation District, reserve the right to require additional monitoring where a danger of water pollution is present, or water pollution is suspected to be occurring from a construction activity subject to this general permit, or for any reason in accordance with, 25 Pa. Code Section 92.41. The permittee or co-permittee shall commence such monitoring upon notification from the Department, or authorized County Conservation District.

3. RECORD KEEPING

a. Retention of Records

The permittee and co-permittee shall retain records of all monitoring information including copies of all monitoring and inspection reports required by this permit, and records of data used to complete the Notice of Intent for this permit, for a period of three years from the date of the termination of coverage under this permit.

b. Reporting of Monitoring Reports

Monitoring results shall be submitted to the Department, or authorized County Conservation District upon request.

4. DISCHARGES CONSISTENT WITH TERMS AND CONDITIONS OF THE PERMIT

All discharges authorized by this NPDES permit shall be consistent with the terms and conditions of the permit.

PART B

STANDARD CONDITIONS

1. MANAGEMENT REQUIREMENTS

a. Permit Modification, Termination, or Revocation and Reissuance

(1) This permit may be modified, suspended, revoked and reissued, or terminated during its term for any of the causes specified in 25 Pa. Code Chapter 92.

The Department may modify, revoke, suspend, or terminate previously issued coverage under this general NPDES permit, and require the stormwater discharger to apply for and obtain an Individual NPDES permit in accordance with 25 Pa. Code Chapter 92.

(2) The filing of a request by the permittee or co-permittee for a permit or coverage modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not stay any permit condition.

(3) Permit modification or revocation will be conducted according to 25 Pa. Code Chapter 92.

b. Duty to Provide Information

(1) The permittee or co-permittee shall furnish to the Department, or authorized County Conservation District, within 30 days of the date of request, any information that the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or coverage approved under this permit, or to determine compliance with this permit.

(2) The permittee or co-permittee shall furnish, upon request, to the Department, or authorized County Conservation District, copies of records required to be kept by this permit.

(3) When the permittee or co-permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI, PPC Plan, E&S Plan, PCSM Plan or in any other report to the Department, or authorized County Conservation District, the permittee or co-permittee shall promptly submit or correct such facts or information.

(4) The permittee or co-permittee shall give seven calendar days advance notice to the Department, or authorized County Conservation District, of any planned physical alterations or additions to the permitted facility which could, in any way, substantially affect the quality and/or quantity of stormwater discharged from the activity.

c. Signatory Requirements

Documents required, submitted, or maintained under this permit shall be signed in accordance with the following:

(1) Notices of Intent, Transferree/Co-permittee Form, and Notices of Termination.

(a) Corporations: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) Partnerships or sole proprietorships: a general partner or the proprietor, respectively; or

(c) Municipalities, State, Federal, or other public agencies: either a principal executive officer or ranking elected official; (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(2) All reports, plans, documents, and other information required by the permit or requested by the Department, or authorized County Conservation District, shall be signed by the permittee or co-permittee, or by a duly authorized representative of the permittee or co-permittee.

(3) If there is a change in the duly authorized representative of the permittee or co-permittee, respectively, the permittee or co-permittee shall notify the Department or authorized County Conservation District within 30 days of the change.

d. Transfer of Ownership or Control

(1) This permit is not transferable to any person except after notice to the Department, or authorized County Conservation District.

(a) In the event of any pending change in control or ownership of facilities from which the authorized discharges emanate, the permittee or co-permittee shall notify the Department, or authorized County Conservation District, using the form entitled "Transferee/Co-permittee Application" of such pending change at least 30 days prior to the change in ownership or control.

(b) The Transferee/Co-permittee Application form shall be accompanied by a written agreement between the existing permittee and the new owner or operator stating that the existing permittee shall be liable for violations of the permit up to and until the date of coverage transfer and that the new owner or operator shall be jointly and individually liable for permit violations under the permit from that date on.

(c) After receipt of the required documentation, the Department, or authorized County Conservation District, shall notify the existing permittee and the new owner or controller of its decision concerning approval of the transfer. Such requests shall be deemed approved unless the Department, or authorized County Conservation District, notifies the applicant otherwise within 30 days.

(2) The Department or authorized County Conservation District may require the new owner or operator to apply for and obtain an Individual NPDES permit.

(3) For purposes of this permit, operators shall include general contractors. If, prior to construction activities, the owner is the permittee and an operator/general contractor is later identified to become a co-permittee, the owner shall:

(a) Notify the Department, or authorized County Conservation District by submitting an administratively complete and acceptable Transferee/Co-permittee Application Form.

(b) After receipt of the documentation described in (a) above, the permit will be considered modified by the Department. For purposes of this permit, this modification is considered to be a minor permit modification.

(c) Monitoring reports and any other information requested under this permit shall reflect all changes to the permittee and the co-permittee name.

e. Removed Substances

Solids, sediments and other pollutants removed in the course of treatment or control of stormwater shall be disposed in accordance with federal and state law and regulations in order to prevent any pollutant in such materials from adversely affecting the environment.

f. Facilities Construction, Operation, and Maintenance

The permittee and co-permittee are responsible for the design and installation of the BMPs identified in the E & S Plan, PPC Plan and PCSM Plan, and for the operation and maintenance of the BMPs identified in the E & S and PPC Plans.

g. **Adverse Impact**

The permittee and co-permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

h. **Reduction, Loss, or Failure of the BMPs**

Upon reduction, loss or failure of the BMPs, the permittee and co-permittee shall take immediate action to restore the BMPs or provide an alternative method of treatment.

i. **Termination of Coverage**

Notice of Termination. Where all stormwater discharges associated with construction activity that are authorized by this permit are eliminated, and BMPs identified in the PCSM Plan have been installed, the permittee or co-permittee of the facility must submit a Notice of Termination (NOT) form that is signed in accordance with Part B.1.c. (Signatory Requirements) of this permit. All letters certifying discharge termination are to be sent to the Department, or the authorized County Conservation District.

2. COMPLIANCE RESPONSIBILITIES

a. **Duty to Comply**

The permittee and co-permittee must comply with all terms and conditions of this general permit. Any permit non-compliance constitutes a violation of the Pennsylvania Clean Streams Law and the federal Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit or permit renewal.

b. **Penalties for Violations of Permit Conditions**

The permittee and co-permittee may be subject to criminal and/or civil penalties for violations of the terms and conditions of this general permit under Section 602 and 605 of the Clean Streams Law, 35 P.S. Sections 691.602 and 691.605, and under the Clean Water Act as specified in 40 C.F.R. Sections 122.41(a)(2) and (3), which are incorporated by reference.

c. **Need to Halt or Reduce Activity Not a Defense**

The permittee or co-permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.

d. **Penalties and Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee or co-permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA (33 U.S.C. §1321) or Section 106 of CERCLA.

e. **Property Rights**

This permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

f. **Severability**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

g. **Other Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee or co-permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act.

h. **Right of Entry**

Pursuant to Sections 5(b) and 305 of the Pennsylvania Clean Streams Law (35 P.S. §§691.5(b) and 691.305) and 25 Pa. Code Chapter 92, and §1917-A of the Administrative Code, the permittee and co-permittee shall allow the head of the Department, the EPA Regional Administrator, and/or an authorized representative of EPA, DEP, County Conservation District or, in the case of a facility which discharges to a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents, as may be required by law, to:

(1) Enter upon the permittee's or co-permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

(2) Have access to and copy at reasonable times, any records that must be kept under the terms and conditions of this permit;

(3) Inspect any facilities or equipment (including monitoring and control equipment); and

(4) Observe or sample any discharge of stormwater.

i. **Availability of Reports.**

Except for data determined to be confidential under Section 607 of the Clean Streams Law, (35 P.S. §691.607) all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department or authorized County Conservation District. As required by the Clean Water Act, the Clean Streams Laws, and 25 Pa. Code, Chapter 92 of the Department's regulations, permit applications, permits, and other documents related to this permit shall not be considered confidential.

j. **Penalties for Falsification of Reports**

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. In addition, criminal sanctions are set forth for false swearing and unsworn falsification at 18 Pa. C.S. §§4903-4904.

3. **DEFINITIONS**

Authorized County Conservation District – For purposes of this permit, shall generally mean the local County Conservation District that has entered into a delegation agreement with the Department to administer the NPDES Program for Stormwater Discharges Associated with Construction Activities. The Department retains program administration and enforcement if the local County Conservation District is not delegated.

Best Management Practices (BMPs) – Activities, facilities, measures, or procedures used to protect, maintain, reclaim and restore the quality of waters, and existing and designated uses within this Commonwealth. BMPs include PPC Plans, E&S Plans, PCSM Plans, Storm Water Management Act Plans, and other treatment requirements, operating procedures, and practices to control project site runoff, spillage or leaks, and other drainage from the construction activity.

Co-Permittee –A discharger of stormwater associated with construction activity who is jointly and individually responsible for compliance with all conditions of a permit and applicable laws with another entity for discharges to surface waters of the Commonwealth from their construction activity.

Department – The Department of Environmental Protection ("DEP") of the Commonwealth.

Director – The Director of the Bureau of Watershed Management, or any authorized employee thereof.

Erosion and Sediment Control Plan ("E&S Plan") – A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation and which meets the requirements of 25 Pa. Code Chapter 102 Rules and Regulations.

Municipality – Any county, city, borough, town, township, school district, institution or any authority created by one or more of the foregoing.

NOI – "The Notice of Intent for Coverage under the Pennsylvania General Permit for Discharges of Stormwater Associated with Construction Activities (PAG-2)."

Owner - A person who holds legal title to the land subject to construction activity. This term also includes the person(s) who held legal title to the land subject to construction activity at the time such activity was commenced on a site.

Permanent Stabilization – Long-term protection of soil and water resources from accelerated erosion.

Person – Any natural person, partnership, association, corporation, business organization, or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment or both, the term "person" shall not exclude the members of an association and the directors, officers, or agents of a corporation.

Point Source - Any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

Preparedness, Prevention and Contingency Plan (PPC Plan) – A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of the Commonwealth. Potential pollutants at construction activities can include, but are not limited to pesticides, fertilizers, lime, petrochemicals, construction-related chemicals and solvents, wastewater, wash water, core drilling wastewater, cement, sanitary wastes or hazardous wastes.

Post Construction Stormwater Management Plan (PCSM Plan) – A site specific plan identifying BMPs to manage stormwater runoff after construction activities have ended and the project site permanently stabilized to protect and maintain existing and designated uses. The PCSMP must contain a written narrative, including calculations or measurements, and justifications for each BMP. The BMPs should be designed to maximize infiltration technologies, minimize point source discharges to surface waters, preserve the integrity of stream channels, and protect the physical, biological and chemical qualities of the receiving water.

Runoff Coefficient – The fraction of total rainfall that will appear at the conveyance as runoff.

Stabilization – The proper placing, grading, constructing reinforcing, lining, and covering of soil, rock or earth to insure its resistance to erosion, sliding or other movement.

Stormwater – Stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Associated with Construction Activity – The discharge into surface waters of the Commonwealth, municipal separate storm sewers, or non-municipal separate storm sewers from any conveyance which is used for collecting and conveying stormwater and which is related to construction activities. Construction activities include clearing, grading, and excavation activities. The term does not include non-point source stormwater discharges from silvicultural activities.

Surface Waters of the Commonwealth – Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, ponds, springs, wetlands and all other bodies or channels of conveyance of surface water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Wetlands – Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

PART C

OTHER CONDITIONS

1. PROHIBITION OF NON-STORMWATER DISCHARGES

All discharges covered by this permit shall be composed entirely of stormwater. Discharges of material other than stormwater must be in compliance with an NPDES permit (other than this permit) issued for the discharge. Discharge of sewage or industrial waste (other than sediment under this permit) to an erosion and sediment control BMP is not permitted.

The discharger may not discharge floating materials, oil grease, scum, foam, sheen and substances which produce odor, taste, turbidity, or settle to form deposits in concentrations or amounts sufficient to be, or create a danger of being, inimical to the water uses to be protected or to human, animal, plant or aquatic life.

2. EROSION AND SEDIMENT CONTROL PLANS

a. An E&S Plan, must be prepared, developed, and implemented for each activity covered by this permit in accordance with the Department's Chapter 102 Rules and Regulations, and Department guidance. Each E & S plan must be submitted to the Department or authorized County Conservation District. The BMPs shall be designed to minimize the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses. Various BMPs and their design standards are listed in the Erosion and Sediment Pollution Control Program Manual (#363-2134-008). The manual is available from the Department or Authorized County Conservation District, or can be downloaded from the Department website www.dep.state.pa.us. E&S Plans, BMPs, and revisions thereto, which meet the requirements of 25 Pa Code Chapter 102, are conditions of this permit and incorporated by reference.

b. E&S Plans required under this permit are considered reports that shall be available to the public under Section 607 of the Clean Streams Law, and 25 Pa. Code, Chapter 92 of the Department's regulations. The owner or operator of a facility with stormwater discharges covered by this permit shall make E & S plans available to the public upon request. E&S Plans must be made available at the site of the construction activity at all times.

c. The staging of earth disturbance activities and maintenance requirements contained in the E&S Plan must be followed.

3. RECYCLING AND DISPOSAL OF BUILDING MATERIALS AND WASTES

All building materials and wastes must be removed from the site and recycled or disposed in accordance with the Department's Solid Waste Management Regulations at 25 Pa. Code §260.1 et seq., §271.1 et seq., and §287.1 et seq. No building material or wastes or unused building materials shall be burned, buried, dumped, or discharged at the site.

4. PREPAREDNESS, PREVENTION AND CONTINGENCY PLANS

If the potential exists for causing accidental pollution of air, land, or water, or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials, the permittee or co-permittee must develop a Preparedness, Prevention, and Contingency (PPC) Plan. The PPC Plan shall be developed in accordance with Department regulations. The PPC Plan shall identify areas which may include, but are not limited to, waste management areas, raw material storage areas, temporary and permanent spoils storage areas, maintenance areas, and any other areas that may have the potential to cause non-compliance with the terms and conditions of this permit due to the storage, handling, or disposal of any toxic or hazardous substances such as oil, gasoline, pesticides, herbicides, solvents, etc. BMP's shall be developed and implemented for each identified area. The PPC Plan shall be maintained on site at all times and shall be made available for review at the Department's or authorized County Conservation Districts' request.

5. POST CONSTRUCTION STORMWATER MANAGEMENT PLANS

A PCSM Plan that identifies the BMPs to be installed to manage and treat the stormwater discharge to protect water quality after construction must be prepared and implemented. Such BMPs should be designed to maximize groundwater infiltration, to protect the structural integrity of the stream, and to protect and maintain existing and

designated uses. In addition, some counties have adopted Act 167 Stormwater Management Plans that incorporate measures to protect and maintain existing uses and protect and maintain water quality to maintain those existing uses. In areas where plans exist and are supported by local ordinances, the applicant must design the PCSM Plan in accordance with these ordinances. Permittees and co-permittees are responsible for proper installation of the PCSM Plan BMPs prior to the submission of the Notice of Termination of this Permit.

6. PRE-CONSTRUCTION CONFERENCES

The permittee or co-permittee shall contact the Department or authorized County Conservation District at least seven days before construction is to begin to determine if a pre-construction conference is required. The permittee, co-permittee and others undertaking the earth disturbance activity must attend a pre-construction conference when requested by the Department or authorized County Conservation District.

7. SPOIL OR BORROW AREA

An E&S Plan shall be submitted to the Department or authorized County Conservation District and implemented for all spoil and borrow areas, regardless of their location.

8. PHASED PROJECTS

Prior to the commencement of earth disturbance activities for subsequent phases of the project, the permittee or co-permittee shall submit an E&S Plan and PCSM Plan for each additional phase or portion of the project to the Department or authorized County Conservation District.

Coverage under this permit is only granted for those phases or portions of a project for which an E&S Plan and PCSM Plan has been submitted to the Department or authorized County Conservation District.

9. CLARIFICATION ASSISTANCE

The permittee or co-permittee shall contact the Department or authorized County Conservation District for clarification of any requirements contained in the E&S Plan, PCSM Plan, PPC Plan, or other documents related to this permit.

10. WETLAND PROTECTION

If hydric soils are present, a wetland determination must be conducted in accordance with Department procedures. All wetlands identified must be included on the E&S Plan and PCSM Plan.

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3620-FM-WQ0079 8/97

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

APPROVAL OF COVERAGE UNDER THE NPDES STORM WATER GENERAL PERMIT (PAG-2) FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES

_____

_____

NPDES PERMIT NO: PA-R_____

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In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 et seq. ("the Act") and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 et seq., the Department of Environmental Protection hereby approves the Notice of Intent (NOI) submitted for coverage by:

INSERT FACILITY NAME AND ADDRESS BELOW

_____

_____

_____

_____

_____

to discharge storm water to (NAME RECEIVING WATER(S) BELOW):

_____

_____

subject to the Department's enclosed PAG-2 which incorporates all effluent limitations, monitoring and reporting requirements and other terms, conditions, criteria and special requirements for the discharge of storm water from point sources composed entirely of storm water associated, in whole or in part, with construction activity, as defined in this General Permit, to surface waters of the

Commonwealth, including to municipal separate storm sewers and non-municipal separate storm sewer.

APPROVAL TO DISCHARGE IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREIN COMMENCES ON (DATE OF APPROVAL OF COVERAGE), AND IS VALID FOR A PERIOD OF 5 YEARS WHEN CONDUCTED PURSUANT TO SUCH TERMS AND CONDITIONS. COVERAGE MAY BE EXECUTED BY THE DEPARTMENT IF A TIMELY ADMINISTRATIVELY COMPLETE AND ACCEPTABLE RENEWAL NOI IS SUBMITTED TO THE DEPARTMENT AT LEAST 90 DAYS PRIOR TO (5 YEARS FROM THE APPROVAL OF COVERAGE), UNLESS PERMISSION FOR SUBMISSION AT A LATER DATE HAS BEEN GRANTED BY THE DEPARTMENT.

3620-FM-WQ0079 5/97

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

GENERAL PERMIT FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES (AMENDMENT 1)
PAG-2

In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (The "Act", and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 et seq., and rules and regulations promulgated thereto, the Department of Environmental Protection hereby authorizes, by general permit, subject to the terms and conditions contained herein, the discharge of storm water from eligible new and existing discharges composed entirely of storm water that are composed of point source storm water discharges associated with construction activity to surface waters of the Commonwealth, including municipal separate storm sewers, and non-municipal separate storm sewers.

This permit authorizes discharges from eligible new and existing discharges of storm water associated with construction activity to receiving waters in accordance with effluent limitations; monitoring, and other conditions set forth in Parts A, B, and C hereof. Performance based effluent limits are established in the general permit through implementation of best management practices which restrict the quantity and rate of sediment discharge into surface waters of the Commonwealth. The Department, and local county conservation districts when acting as the reviewing entity, reserve the right to enter onto a site to conduct monitoring or to require additional monitoring pursuant to Part A.2 (Monitoring Requirements) of the general permit where necessary in appropriate circumstances, such as where a danger of water pollution is present, or water pollution is suspected to be occurring from a construction activity subject to this general permit.

1. General information and requirements.

Owners and operators of storm water discharges associated with construction activity must submit a Notice of Intent (NOI) to the reviewing entity in accordance with the NOI format specified in the NOI Instruction package, for coverage of each construction activity under this

general permit, prior to commencing any discharge. Newly proposing to discharge stormwater from construction activities or eligible persons proposing to expand the scope of previously authorized construction activity which discharges stormwater from construction activity wish to be covered by this general permit must file an administratively complete and acceptable NOI with the reviewing entity at least 30 days prior to commencing the construction activity. The reviewing entity will assign a unique permit identification number to each NOI and will review the discharger's erosion and sediment control plan. For the purposes of this general permit, operators include general contractors and other persons conducting construction activities on behalf of the owner. If prior to construction activities a general contractor has not been determined, the owner shall apply for the general permit. Once a general contractor has been selected, the general contractor must be added to the permit as a co-permittee, or the permit must be transferred in accordance with Part B.1.d of this permit.

2. Storm water discharges associated with construction activity cannot be covered by this permit:

   a. Discharges which contain hazardous pollutants, toxics, or any other substance which - because of its quantity, concentration, or physical, chemical, or infectious characteristics - may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into surface waters of the Commonwealth;

   b. Discharges which individually or cumulatively have the potential to cause significant adverse environmental impact;

   c. Discharges to waters for which NPDES general permit coverage is prohibited under 25 Pa. Code Chapter 92;

   d. Discharges which are not, or will not be in compliance with any of the terms or conditions of the general permit;

   e. Discharges from persons with a significant history of noncompliance;

   f. Discharges subject to categorical point source effluent limitations promulgated by EPA;

   g. Discharges which do not, or will not, result in compliance with applicable effluent limitations or water quality standards;

   h. Discharges from construction activities which the Department determines require an Individual NPDES permit to ensure compliance with the Clean Water Act, the Clean Streams Law, or rules and regulations promulgated thereto; or where a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

   i. Discharges associated with a construction activity where the excavation will be conducted 25 feet or greater below ground level prior to disturbance; and

   j. Discharges associated with a construction activity that would adversely affect a Pennsylvania or federal endangered or threatened species or its habitat.

3. The Department and the local county conservation district, when acting as the reviewing entity, may require by written notice any person authorized by this permit to apply for an Individual NPDES permit. This notice shall include the following: (1) a brief statement of the

reasons for this decision, (2) an application form for an Individual NPDES permit, (3) a statement setting a 90 day deadline for the owner or operator to file the application, and (4) a statement that on the effective date of the Individual NPDES permit, as it applies to the individual permittee, coverage under this general permit shall automatically terminate.

The applicant shall submit the individual permit application within 90 days of receipt of notice. Timely submission of a complete Individual NPDES permit application shall result in continuation of coverage of the applicable discharges under the general permit until such time as the Department takes final action on the pending Individual permit application, unless the owner or operator does not meet the eligibility requirements of the general permit, or is otherwise prohibited from general permit coverage, in as such coverage under the general permit is automatically terminated. Failure to submit the application within 90 days shall result in automatic termination of coverage of the applicable point sources under the general permit.

4. Application for renewal of coverage under this general permit must be submitted to the Department or county conservation district, when acting as the reviewing entity, at least 90 days prior to the expiration date of the coverage indicated on the approval of coverage form unless permission has been granted by the Department for submission at a later date). A request for renewal of coverage is to be made using the "Notice of Intent for Coverage Under the Pennsylvania General Permit for Discharges of Storm Water from Construction Activities." In the event that a timely and complete application for renewal of coverage has been submitted and the Department is unable, through no fault of the permittee, to reissue the approval for coverage before the expiration date of the approved coverage, the terms and conditions of the approved coverage will be automatically continued and will remain fully effective and enforceable pending the issuance or denial of the renewal of coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit.

5. No condition of this permit shall release the permittee from any responsibility or requirements under other federal or Pennsylvania environmental statutes or regulations or local ordinances.

The NPDES General Permit (PAG-2) for Discharges of Stormwater from Construction Activities issued _____, and shall expire at midnight _____ unless reissued on or before this date by the Department.

AMENDMENT 1 TO

STORM WATER NPDES
GENERAL PERMIT
(PAG-2) ISSUED
PROTECTION

BY

GLENN MAURER
DIRECTOR
BUREAU OF WATER QUALITY

PART A

EFFLUENT LIMITATIONS, MONITORING AND REPORTING REQUIREMENTS

1. EFFLUENT LIMITATIONS

This permit establishes effluent limitations in the form of implemented Best Management Practices (BMPs) such as Preparedness, Prevention, and Contingency Plans, and Erosion and Sediment Control Plans which restrict the rates and quantities of sediment and associated pollutants from being discharged into surface waters of the Commonwealth.

All storm water discharges associated with construction activities must comply with applicable effluent limitations established in 25 Pa. Code Chapters 91-97, 101, 102, and 105.

Water Quality based effluent limitations may be imposed under applicable state and federal law when necessary to ensure that the water quality standards of the receiving water are attained for all storm water discharges associated with an industrial activity covered under this permit, a water quality based effluent. Discharges of storm water associated with a construction activity shall not result in a violation of the water quality standards.

2. MONITORING REQUIREMENTS

The permittee and co-permittee must conduct routine visual site inspections. The inspections must be conducted by qualified personnel, trained and experienced in erosion and sediment control. Inspections must be conducted bi-weekly, and after each precipitation event, to ascertain that the BMPs are operational and effective in preventing pollution to the waters of the Commonwealth. Where BMP's are found not to be operational or effective, the permittee or co-permittee shall take immediate action to correct the non-compliance conditions. A written report shall be kept of the observations and shall identify the date, time, person conducting the inspection, shall identify any incidents of noncompliance, and actions to correct and remedy non-compliance.

The Department, and the local conservation district, when acting as the reviewing entity, reserve the right to require additional monitoring where necessary in appropriate circumstances such as where a danger of water pollution is present, or water pollution is suspected to be occurring from a construction activity subject to this general permit. The permittee or co-permittee shall commence such monitoring upon notification from the Department, or the local county conservation district, when acting as the reviewing entity.

3. REPORTING AND RECORD KEEPING

a. **Retention of Records.**

The permittee or co-permittee shall retain records of all monitoring information including copies of all monitoring and inspection reports required by this permit, and records of data used to complete the Notice of Intent for this permit, for a period of three years from the date of the termination of coverage under this permit. This period may be extended by request of the Department, and the local county conservation district, if acting as the reviewing entity.

b. **Reporting of Monitoring Results.**

Monitoring results shall be submitted to the Department or local County Conservation

District when acting as the reviewing entity.

c. **Non-Compliance Reporting.**

(1) Required reporting. The permittee or co-permittee shall report non-compliance to the Department and the local county conservation district, when acting as the reviewing entity, in accordance with the following:

(a) 24-Hour Oral Reporting - the permittee or co-permittee shall give at least a 24 hour advanced notice to the Department or the local county conservation district, when acting as the reviewing entity, of any planned changes to the permitted activity or facility that may result in non-compliance with permit requirements. The permittee or co-permittee shall also report non-compliance with any term or condition of this permit to the Department and the local county conservation district, when acting as the reviewing entity, within 24 hours of becoming aware of the non-compliance.

(b) Follow-up Written Reporting - where the permittee or co-permittee orally reports the information in Part A.3.c, a written report outlining the reported information must be completed, kept on file and submitted to the Department, and the local county conservation district, if acting as the reviewing entity.

(2) Required Information. The reports and notifications required in Part A.3.c. (1) above shall contain the following information:

(a) A description of the non-compliance;

(b) The period of non-compliance, including exact dates and times and/or the anticipated time when the activity will return to compliance; and

(c) Steps being taken to reduce, eliminate, and prevent recurrence of the non-compliance.

4. DISCHARGES CONSISTENT WITH TERMS AND CONDITIONS OF THE PERMIT

All discharges authorized by this NPDES permit shall be consistent with the terms and conditions of the permit.

PART B

STANDARD CONDITIONS

1. MANAGEMENT REQUIREMENTS

a. Permit Modification, Termination, or Revocation and Reissuance

(1) This permit may be modified, suspended, revoked and reissued, or terminated during its term for any of the causes specified in 25 Pa. Code Chapter 92.

The Department may modify, revoke, suspend, or terminate previously issued coverage under this general NPDES permit, and require the storm water discharger to apply for and obtain an individual NPDES permit in accordance with 25 Pa. Code Chapter 92.

(2) The filing of a request by the permittee or co-permittee for a permit or coverage modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not stay any permit condition.

(3) Permit modification or revocation will be conducted according to 25 Pa. Code Chapter 92.

b. Duty to Provide Information

(1) The permittee or co-permittee shall furnish to the Department or the local county conservation district if acting as the reviewing entity, within 30 days of the date of the request, any information that the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or coverage approved under this permit, or to determine compliance with this permit.

(2) The permittee or co-permittee shall furnish to the Department or the local county conservation district if acting as the reviewing entity, upon request, copies of records required to be kept by this permit.

(3) When the permittee or co-permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department or the local county conservation district if acting as the reviewing entity, the permittee or co-permittee shall promptly submit or correct such facts or information.

(4) The permittee or co-permittee shall give 7 calendar days advance notice to the Department or the local county conservation district if acting as the reviewing entity of any planned physical alterations or additions to the permitted facility which could, in any way, substantially affect the quality and/or quantity of storm water discharged from the activity.

c. Signatory Requirements

All Notices of Intent, Erosion and Sediment Control Plans, Preparedness, Prevention and Contingency Plans, reports, certifications or information either submitted to the Department or the local county conservation district, if acting as the reviewing entity, or that this permit requires be maintained by the permittee or co-permittee, shall be signed.

(1) All Notices of Intent shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(2) All reports required by the permit and other information requested by the Department or the local county conservation district, when acting as the reviewing entity shall be signed by a person described above or by a duly authorized representative of that person.

(3) Changes in Authorization. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part B.1.(c) must be submitted to the Department or the local county conservation district if acting as the reviewing entity prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. <u>Transfer of Ownership or Control</u>

(1) This permit is not transferable to any person except after notice to the Department, or local county conservation district, when acting as the reviewing entity.

(a) In the event of any pending change in control or ownership of facilities from which the authorized discharges emanate, the permittee or co-permittee shall notify the Department or the local county conservation district if acting as the reviewing entity by the form entitled "Transferee/Co-permittee Application" of such pending change at least 30 days prior to the change in ownership or control.

(b) The Transferee/Co-permittee Application Form shall be accompanied by a written agreement between the existing permittee and the new owner or operator stating that the existing permittee shall be liable for violations of the permit up to and until the date of coverage transfer and that the new owner or operator shall be liable for permit violations under the permit from that date on.

(c) After receipt of the required documentation, the Department or the local county conservation district, when acting as the reviewing entity shall notify the existing permittee and the new owner or controller of its decision concerning approval of the transfer. Such requests shall be deemed approved unless the Department or

the local county conservation district when acting as the reviewing entity notifies the applicant otherwise within 30 days.

(d) Monitoring Reports and any other information requested under part A.3 of the permit shall have the names changed to reflect a transfer of ownership.

(2) The Department or the local county conservation district, when acting as the reviewing entity may require the new owner or operator to apply for and obtain an Individual NPDES permit, as stated in the cover sheet of this permit.

(3) For purposes of this permit, operators shall include general contractors. If, prior to construction activities, the owner is the permittee and an operator/general contractor is later identified to become a co-permittee, the owner shall:

(a) Notify the Department, and the local county conservation district, if acting as the reviewing entity, at least 30 days prior to the addition in ownership or control in a notarized statement stating that the co-permittee has agreed to abide by the terms and conditions of this permit.

(b) After receipt of the documentation described in (a) above, the permit will be considered modified by the Department. For purposes of this permit, this modification is considered to be a minor permit modification.

(c) Monitoring Reports and any other information requested under Part A.3 of the permit shall have the names changed to reflect the change in permittee name to include the co-permittee name.

e. Removed Substances

Solids, sediments and other pollutants removed in the course of treatment or control of stormwaters shall be disposed of in accordance with federal and state law and regulations in order to prevent any pollutant in such materials from adversely affecting the environment.

f. Facilities Construction, Operation, and Maintenance

The permittee or co-permittee shall design, build and at all times properly operate and maintain all Best Management Practices (BMPs) ~~such as PPC Plans, Erosion~~ and Sediment Control Plans, and any other storm water pollution prevention or management plans, which are installed or used by the permittee or co-permittee to achieve compliance with the conditions of this permit. BMPs shall be designed, implemented, and maintained. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee or co-permittee only when necessary to achieve compliance with the conditions of the permit.

g. Adverse Impact

The permittee or co-permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

h. Reduction, Loss, or Failure of the BMPs

Upon reduction, loss or failure of the BMPs, the permittee or co-permittee shall take immediate action to restored the BMPs or an alternative method of treatment is provided.

i. Termination of Coverage

(1) Notice of Termination. Where all storm water discharges associated with construction activity that are authorized by this permit are eliminated, the permittee or co-permittee of the facility must submit a "Notice of Termination Form" that is signed in accordance with Part B.1.c. (signatory requirements) of this permit.

(2) Addresses. All letters certifying discharge termination are to be sent to the appropriate Department Regional Office, or the local county conservation district, if acting as the reviewing entity.

2. RESPONSIBILITIES

a. Duty to Comply

The permittee or co-permittee must comply with all terms and conditions of this general permit. Any permit non-compliance constitutes a violation of the Pennsylvania Clean Streams Law and the federal Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit or permit renewal.

b. Penalties for Violations of Permit Conditions

The permittee or co-permittee may be subject to criminal and/or civil penalties for violations of the terms and conditions of this general permit under Section 602 and 605 of the Clean Streams Law, 35 P.S. Sections 691.602 and 691.605, and under the Clean Water Act as specified in 40 C.F.R. Sections 122.41(a)(2) and (3), which are incorporated by reference.

c. **Need to Halt or Reduce Activity Not a Defense**

The permittee or co-permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.

d. **Penalties and Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee or co-permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA (33 U.S.C. § 1321) or Section 106 of CERCLA.

e. **Property Rights**

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

f. **Severability**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

g. **Other Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee or co-permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act.

h. **Right of Entry**

Pursuant to Sections 5(b) and 305 of the Pennsylvania Clean Streams Law (35 P.S. §§ 691.5(b) and 691.305) and 25 Pa. Code Chapter 92, and §1917-A of the Administrative Code, the permittee and co-permittee shall allow the head of the Department, the EPA Regional Administrator, and/or an authorized representative of EPA, DEP, county conservation district or, in the case of a facility which discharges to a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents, as may be required by law, to:

(1) Enter upon the permittee's or co-permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

(2) Have access to and copy at reasonable times, any records that must be kept under the terms and conditions of this permit;

(3) Inspect any facilities or equipment (including monitoring and control equipment); and

(4) Sample any discharge of storm water.

i. Availability of Reports.

Except for data determined to be confidential under Section 607 of the Clean Streams Law, (35 P.S. §691.607) all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department or the local county conservation district, when acting as the reviewing entity. As required by the Clean Water Act, the Clean Streams Laws, and Section 92.63, permit applications, permits, and effluent data shall not be considered confidential.

j. **Penalties for Falsification of Reports**

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. In addition, criminal sanctions are set forth for false swearing and unsworn falsification at 18 Pa. C.S. §§4903-4904.

3. DEFINITIONS

Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution to the waters of the Commonwealth. BMPs include PPC Plans, Erosion and Sediment Control Plans, Storm Water Management Act Plans, and other treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, and other drainage from the construction activity.

Co-Permittee -A discharger of storm water associated with construction activity who is jointly and severally responsible for compliance with all conditions of a permit and applicable laws with another entity for discharges to surface waters of the Commonwealth from their construction activity. Each co-permittee shall only be responsible for storm water discharges from activities owned and/or operated by such co-permittee.

Department - The Department of Environmental Protection ("DEP") of the Commonwealth.

Director - The Secretary of the Department of Environmental Protection, or any authorized employee thereof.

Municipality - Any county, city, borough, town, township, school district, institution or any authority created by one or more of the foregoing.

NOI - "The Notice of Intent for Coverage under the Pennsylvania General Permit for Discharges of Storm Water from Construction Activities."

Operator - An owner, general contractor, or other person conducting construction activities on behalf of the owner, including the development, implementation and maintenance of best management practices associated with stormwater discharges from the construction activity.

Outfall - means point source as defined by 25 Pa. Code §92.1 which is any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animals feeding operation, vessel, or other floating craft from which pollutants are or may be discharged.

Owner - A person who holds legal title to the land subject to construction activity. This term also includes the person(s) who held legal title to the land subject to construction activity at the time such activity was commenced on a site.

Person - Any natural person, partnership, association, corporation, business organization, or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment or both, the

term "person" shall not exclude the members of an association and the directors, officers, or agents of a corporation.

Reviewing entity - for the purposes of this general permit, shall generally mean the local county conservation district. Persons seeking coverage under the general permit must contact the local county conservation district in the county for which coverage is sought to ascertain if the district is participating as the entity reviewing NOI's submitted pursuant to the general permit. The Department is the reviewing entity in a given county if the local county conservation district chooses not to participate in the review of NOI's submitted pursuant to this general permit.

Runoff Coefficient - The fraction of total rainfall that will appear at the conveyance as runoff.

Stabilization - means the proper placing, grading and/or covering of soil, rock or earth to insure its resistance to erosion, sliding or other movement. The standard for vegetative cover to be a uniform coverage or density is 70% across the entire disturbed area.

Storm Water - Storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Construction Activity - means the discharge into surface waters of the Commonwealth, municipal separate storm sewers, or non-municipal separate storm sewers from any conveyance which is used for collecting and conveying storm water and which is related to construction activities. Construction activities include clearing, grading, and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. The term does not include non-point source storm water discharges from silvicultural activities.

Surface Waters of the Commonwealth - Any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs, wetlands and all other bodies or channels of conveyance of surface water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

PART C

OTHER CONDITIONS

1. PROHIBITION OF NON-STORM WATER DISCHARGES

All discharges covered by this permit shall be composed entirely of storm water. Discharges of material other than storm water must be in compliance with an NPDES permit (other than this permit) issued for the discharge.

2. EROSION AND SEDIMENT CONTROL PLANS

a. An Erosion and Sediment Control Plan must be developed and implemented for each facility covered by this permit. Each plan must be submitted to the Department or local county conservation district, if acting as the reviewing entity. Erosion and Sediment Control Plans must be prepared in accordance with the Department's Chapter 102 Rules and Regulations, and additional or subsequent requirements and guidelines. Applicable requirements specified in submitted Erosion and Sediment Control Plans and any changes or revisions to the Plan if it is revised during the permit term are, upon authorization to discharge under this general permit, incorporated by reference.

b. Erosion and Sediment Control Plans required under this permit are considered reports that shall be available to the public under Section 607 of the Clean Streams Law, and § 92.63 of the Department's regulations. The owner or operator of a facility with storm water discharges covered by this permit shall make plans available to the public upon request by the public. Erosion and Sediment Control Plans must be made available at the site of the construction activity at all times.

3. PROPER DISPOSAL OF BUILDING MATERIALS AND WASTES

All building materials and wastes must be removed from the site and recycled or disposed of in accordance with the Department's Solid Waste Management Regulations at 25 Pa. Code § 260.1 et seq., §271.1 et seq., and §287.1 et seq. No building material or wastes or unused building materials shall be buried, dumped, or discharged at the site.

4. APPROVED STATE OR LOCAL PLANS

Permittees and Co-permittees who discharge storm water associated with construction activities must include BMP's for perm_____ Storm Water Management. The BMP's shall be consistent with procedures and requirements specified in approved watershed storm water management plans, including local storm water management ordinances developed pursuant to the Pennsylvania Storm Water Management Act (P.L. 864; No. 167, October 4, 1978). Applicable BMPs, procedures, and requirements specified in watershed storm water management plans approved by state or local officials are, upon authorization to discharge under this general permit, incorporated by reference.

5. PREPAREDNESS, PREVENTION AND CONTINGENCY PLANS

a. If the potential exists for causing accidental pollution of air, land, or water, or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials, the permittee or co-permittee must develop a Preparedness, Prevention, and Contingency (PPC) Plan. The PPC Plan shall be developed in accordance with Department Regulations. The PPC Plan shall identify areas which may

include, but are not limited to, waste management areas, raw material storage areas, temporary and permanent spoils storage areas, maintenance areas, and any other areas that may have the potential to cause non-compliance with the terms and conditions of this permit due to the storage, handling, or disposal of any toxic or hazardous substances such as oil, gasoline, pesticides, herbicides, and solvents, etc. Best Management Practices shall be developed and implemented for each identified area. The PPC Plan shall be maintained on site at all times and shall be made available for review at the Department's or county conservation districts' request.

b. This permit does not authorize the discharge of any toxic or hazardous substances, or oil resulting from an on-site spill.

6. PRE-CONSTRUCTION CONFERENCES

The permittee or co-permittee shall notify the reviewing entity (conservation district or the Department) by telephone or certified mail, at least seven days before construction is to begin. The permittee, co-permittee and others undertaking the earthmoving activity must attend a pre-construction conference if requested by the county conservation district or the Department.

7. TERMINATION NOTICE

The permittee or co-permittee shall promptly notify the reviewing entity (the Department or conservation district) by submitting a Notice of Termination form, when all areas of earthmoving are completed, stabilized, and a final inspection of the site may occur.

8. SPOIL OR BORROW AREA

Prior to the start of operations at any spoil, borrow or other work area not detailed on the approved Erosion and Sediment Control Plan, whether located within or outside of the indicated construction limits, the permittee or co-permittee shall develop, and have authorized by the reviewing entity (Department or conservation district), a revised Erosion and Sediment Control Plan for each site.

9. PHASED PROJECTS

Approved coverage under this permit is only granted for those phases or parcels for which an Erosion and Sediment Control Plan has been submitted to and authorized by the reviewing entity (Department or conservation district).

Prior to the commencement of earthmoving activities on additional phases or parcels of the project, the permittee or co-permittee shall submit an Erosion and Sediment Control Plan for each additional phase or parcel of the project for review and authorization by the reviewing entity (Department or conservation district).

10. ADDITIONAL REQUIREMENTS

a. The permittee or co-permittee shall contact the processing entity for clarification of any requirements contained in the Erosion and Sediment Control Plan.

b. If the earthmoving activities authorized by this permit at any time create conditions which cause or threaten to cause pollution to waters of the Commonwealth, the permittee or co-permittee shall immediately implement remedial measures to correct the conditions.

c. The erosion and sediment control best management practices shall be constructed, maintained, and monitored under the supervision of a competent individual trained and experienced in erosion and sediment control.

d. The staging of earthmoving activities and maintenance directions contained in the plan must be followed.

e. Sediment shall at no time accumulate in control measures or facilities to a depth sufficient to limit storage capacity or interfere with the settling efficiency or functioning of the device. Sediment shall be removed and stabilized in a manner that will not create pollution.

f. Discharge of sewage or industrial waste (other than sediment under this permit) to an erosion control best management practice is not permitted.

g. Issuance of this permit does not authorize earthmoving activities in regulated wetlands. Any changes in the erosion control plan resulting from an authorization issued by the Department or other agency for activities in wetlands must be submitted to the processing entity for review and approval prior to initiating the activity.